

(2006) 02 CAL CK 0051
In the Calcutta High Court

Case No : Writ Petition No. 10621 (W) of 2005 and C.A.N. No. 9233 of 2005

Pabitra Kumar Dutta and Others

APPELLANT

Vs

General Manager, Eastern Railway and Others

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Railways Act, 1989 — Section 147

Citation : AIR 2006 Cal 157

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Rabilal Moitra and P.S. Deb Barman, for the Appellant; R.P. Mookherjee, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The fifteen petitioners in this writ petition (the fifteenth petitioner is an association) question the similar orders of the Senior Divisional Commercial Manager, Eastern Railway, Howrah dated May 5th, 2005.

2. One of the orders reads as follows :

Open Tender of cycle stand at Jaugram station.

You were awarded the contract of running a cycle stand at Jaugram station in the year 1987 for a period of 3 years w.e.f. 1-3-1987 and the License fee was fixed @ Rs. 206/- per month. The period of contract has expired on 28-2-1990.

However, you were allowed to run the said cycle stand after expiry of the said contractual period. The Railway Administration now have decided not to allow you to run the said cycle stand beyond 30th June, 2005 and you are advised to vacate the said cycle stand w.e.f. 1st July 2005.

In the meantime open tender is going to be floated for licensing of cycle stand contract at Jaugram station and if you are interested, you can participate in the

Open Vender.

3. It is argued that the orders are violative of Articles 19 and 21 of the Constitution of India Counsel says that they are also violative of Article 14 in that the unfair and unreasonable step was taken without any disclosed reason, and also without following the due process of law. His argument is that without initiating requisite proceedings the authorities were not empowered to decide to remove the persons concerned from the parts of the railway occupied by them on the strength of the respective licences granted by the authorities in the past. It is further argued that the policy decision sought to be put into use by the authorities is violative of Article 14 of the Constitution of India. Counsel relies on a division bench decision of the Allahabad High Court dated March 23rd, 2005 given in Civil Misc. Writ Petition No. 475 of 2005 reported in 2005 All LJ 2015 A.H. Wheller and Company (P) Ltd. and Anr. v. Union of India and Ors.

4. It seems to me that the authorities have not taken any unfair or unreasonable step in the matter. I agree with counsel for the railway that in view of the changed policy decision of the railway board circulated by commercial circular No, 39 of 2004 dated October 29th, 2004, the senior divisional commercial manager was fully justified in issuing the impugned orders informing the petitioners about the initiation of the tender processes and directing them to vacate the cycle stands with effect from July 1st, 2005. That authority also informed the petitioners that they were at liberty to participate in the tender processes, if they were otherwise eligible.

5. Admittedly licences were separately granted to the first to fourteenth petitioners. At the date the impugned orders were issued those licences were not in force, the fixed tenures having expired long before that date. But the fact remains that at that date all those persons were actually occupying the places concerned and were running their cycle stands on payment of monthly licence fee determined by the railway. The question is whether in such a case the railway was empowered and entitled to revoke the licence and call upon the persons concerned to vacate the places in their occupation.

6. The licences granted to the persons concerned were definitely subject to the decisions that were to be taken by the railway from time to time. In my view, the policy decision of the railway board dated October 29th 2004, having taken on disclosed reasons, does not warrant any interference by the Court. I am unable to agree with counsel for the petitioners that in view of the division bench decision of the Allahabad High Court interfering with the commercial circular No. 38 of 2004 dated October 12th. 2004 issued by the railway board regarding revised book stall policy, the policy decision that governs the present case (regarding cycle/motor cycle/scooter/car parking contracts) should be quashed.

7. In my view, the reasons disclosed in the policy decision dated October 29th, 2004 cannot be said to be detrimental to the public interest. The decision being a policy decision of the railway board, in my opinion, it should not be interfered

with by the writ Court unless it adversely affects against the public interest. There is no reason to substitute the wisdom of the Court for that of the authority, which was duly empowered to take the policy decision.

8. I am also of the view that with the policy decision coming into force, the senior divisional commercial manager was not only empowered, but also incurred the obligation to take necessary steps for its implementation. Hence the orders dated May 5th, 2005 issued by him cannot be said to be vitiated by unfairness or unreasonableness of any nature. The licences, at the relevant date, being not for any fixed tenure could have been revoked in the manner indicated in the impugned orders. The authorities were also empowered to remove the persons concerned from the railway in exercise of powers available under provisions of the Railways Act, 1989, Section 147. They were not under any obligation to initiate any proceedings under any other provision of law for removing them from the places concerned. This issue is no longer *res integra*. I gave decision regarding this, and I am told that the division bench of this Court also decided the issue.

9. For these reasons I find no merit in the writ petition. Accordingly I hereby dismiss the writ petition. As a result, the application for vacation of interim order need not be decided on merits. I order that that application shall be deemed to be disposed of.

10. Advocate for the petitioners prays for stay. I have already dismissed the writ petition. The tender process was to be initiated long ago. In my view, no further roadblock should be created in the process. Hence I am not inclined to make any restraint order after dismissing the writ petition.

11. There shall be no order for costs in the proceedings.

12. Copy of this order duly authenticated by Assistant Registrar (Court) or ACO shall be supplied to advocates for the parties on the usual undertakings.