
(2010) 01 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) No. 5902 of 2008

Pradeep Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0098

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Rajesh Raina, for the Appellant; S.R. Narayan, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This is the second round of litigation for these six Petitioners who were working as "Iron Patti Packers" at the New Delhi Railway Station for nearly two decades pursuant to licences issued by the Divisional Railway Manager (DRM) of the Indian Railways (Respondent No. 3 herein).

2. The trouble for the Petitioners began when all of a sudden, by a letter dated 23rd August 2007, their licences were terminated. When their attempts to ascertain the reasons for the termination did not succeed, they approached this Court by filing Writ Petition (C) No. 6760 of 2007 etc. This Court was informed through the counter affidavits filed by the Respondents in the said petitions that "the termination was necessitated inasmuch as certain complaints were received in respect of illegal activities on the part of these Petitioners." The allegation was that the Petitioners were committing illegalities hand-in-glove with railway. This Court found it to be the admitted position that "there has been no communication of any illegal activities or misbehavior to the Petitioners which is the basis of these writ petitions." This Court found that "it is a fact that the Petitioners have been holding licences for a period of over 25 years. Their licences have been terminated on grounds which were never communicated to them. Certainly such termination is not sustainable being violative of principles of

natural justice and settled principles of law." Further this Court observed that "no policy has been placed before this Court in support of the contention that these licences are being discontinued." This Court also found that the Respondents had failed to deal with the grounds urged by the Petitioners in their representations dated 24th and 29th August 2007.

3. Consequently, while allowing the Petitioners writ petitions by the order dated 6th February 2008, this Court issued the following directions:

8. The respondents shall grant a hearing to the Petitioners or their duly authorized representatives in support of the representations dated 24th and 29th August 2007. The date, time and place of hearing shall be communicated to the Petitioners through learned Counsel representing them in this Court within a period of two weeks from today. The respondents shall consider the representations of the petitioners and pass a reasoned and speaking order which shall be communicated to the counsel for the petitioners, petitioners as well as their authorized representatives.

Needless to say, if the petitioners are still aggrieved by the orders which are passed, it shall be open for them to assail the same by way of appropriate legal proceedings.

9. learned Counsel for the petitioners has made a grievance that despite the stand taken by the respondents in these writ petitions, illegal iron patti packing is going on in the railway stations with the connivance of the officials of the railway stations. The respondents shall ensure that such practice, if illegal, is stopped forthwith.

These writ petitions and the applications mentioned are hereby disposed of in the above terms.

4. According to the Petitioners by a letter dated 29th February 2008 from the DRM was received by the Petitioners from their counsel on 3rd March 2008. They were informed by the said letter that a hearing would take place in the office of the DRM on 4th March 2008 at 4 pm. In a representation made on 5th March 2008 by these Petitioners to the DRM they described what transpired in the office of the DRM on 4th March 2008 in the following words:

That the applicants reached the office of Divisional Traffic Manager (DTM) at 1600 hrs., where the DTM enquired from the applicants about their demands. The applicants had answered that they wanted their licenses restored. After ten minutes, the DTM asked the applicants to accompany them to the Chief Traffic Manager's office. The applicants followed the DTM to the Chief Traffic Manager's office, where they were again asked the same question by the Chief Traffic Manager (CTM) that what did the applicants want? The applicants in unison again had answered the question that they wanted their licenses to be restored.

At about 1435 hrs., the counsel for the applicants reached the office of CTM. The counsel enquired about the proceedings/hearing at which, the CTM answered

that the hearing has been completed, we have asked the applicants about their demands and as the order passed by the Railways on 23.8.2007 is justified, therefore, nothing more is required in this hearing and a detailed speaking order shall be passed.

5. The Petitioners, by the aforementioned letter, protested about the above procedure which, according to them, was contrary to the orders passed by this Court. They prayed for a renewal of their licences.

6. On 5th/7th March 2008 the DRM passed an order rejecting the representations of the Petitioners. Aggrieved by the said order the present petitions have been filed.

7. In response to the notice issued by this Court, the Respondents have filed a counter affidavit in which it is contended that the Petitioners are neither on the payrolls of the Respondents nor is there any agreement with regard to their employment. It is stated that the licences of the Petitioners were cancelled on account of malafide and illegal activities violating the terms and conditions of the licences undertaken by the Petitioners which caused harassment to the general public as well as to the Railways. A reference is then made to a letter dated 25th May 2007 written by the Additional Member (Vigilance), Ministry of Railways to the General Manager, Northern Railway stating that he had received complaint about some persons at luggage booking office demanding Rs. 2500/- for booking a motorcycle against the prescribed charges of Rs. 850. It was mentioned therein that a number of outsiders were roaming in and around the parcel office as touts and working in connivance with the Railway Protection Force ("RPF") and Commercial Staff and that such activities were bringing a bad name to the Railways. The counter affidavit asserts that "the licence was terminated after an enquiry which revealed that the Petitioner in connivance with other unauthorised persons/touts were charging exorbitant rates from the general public which was not warranted by the Respondents at all." It is further averred in the counter affidavit that "along with the Petitioner the licences of 27 coolies were also terminated on account of illegal activities and misbehaviour with the passengers."

8. The Respondents claimed that the Petitioners were given a patient hearing pursuant to the order passed by this Court. It is maintained that the Railway Administration was not bound to give any prior show cause notice to the Petitioners for terminating the licences. It is then asserted that "as Railway Administration has decided to disband such facilities of patti packers, as such the services of the Petitioner and five others were no longer required."

9. learned Counsel for the Petitioners pointed out that the impugned order has been passed in complete disregard of the previous order of this Court. Even now the impugned order does not refer to any particular complaint received about any of the Petitioners. No document to show that any enquiry was conducted by the Railways into such complaint has been produced. No copy of any policy of the Railways deciding to disband the facility of patti packers has been produced. The

grounds raised in the Petitioners representations dated 24th and 27th August 2007 have not been dealt with in the impugned order. It is submitted that the basic defect of the order terminating the Petitioners licences being violative of natural justice remained till date inasmuch as the impugned order is passed after a hearing which has turned out to be an empty formality. It is submitted that until reasons, based on materials available on record with the Railways, are provided in the impugned order, it is not possible to sustain the said order.

10. It is further submitted that contrary to the assertion of there being a policy of the Railways to disband the patti packers, the said activity is still being carried on in the Railways. The fact that the Railway Administration has apprehended 72 said touts within a period of 3 months, shows that the so-called illegal activities are still being carried on.

11. learned Counsel for the Respondents referred to the impugned order itself to submit that the Petitioners were found indulging in illegal activities by over charging for booking parcels in connivance with the Railway staff which resulted in maligning of the image of the Railway Administration in the eyes of the bonafide customers. He submitted that there was no requirement to issue any prior show cause notice to any of the Petitioners in terms of the licences issued to them. He referred to the judgment in Chandu Lal v. MCD 1978 RLR 278 to submit that a licence holder had limited rights in terms of Section 52 and 105 of the Transfer of Properties Act, 1882 and therefore cannot assail the impugned order on the ground of violation of the principles of natural justice.

12. This Court on 9th November 2009 noted the contention of the Respondents that "a number of complaints were received against patti licence holders." Consequently, it was directed that the Respondents should produce the relevant complaints before this Court on the next date of hearing. On the next date i.e. on 8th December 2009 learned Counsel for the Respondents prayed for some more time to produce copies of the complaints. The statement of the learned Counsel for the Respondents "that he will file an additional affidavit" was recorded.

13. Today learned Counsel for the Respondents, without filing any affidavit, attempted to hand over across the bar photocopies of certain documents which according to him were copies of the complaints received against the Petitioners. This Court declined to receive such copies across the bar for more than one reason. In the first instance those documents, even according to the learned Counsel for the Respondents, do not find any mention either in the impugned order dated 5th March 2008 (which only generally refers to the complaints received) or in the counter affidavit. learned Counsel for the Respondents then submitted that these copies of the complaints had been misplaced and were only recently traced. This explanation is totally unconvincing. It is not clear when these complaints went missing, when they were traced and why they have not found any mention in the impugned order dated 5th/7th March 2008.

14. Secondly, it would not be open to the Respondents to now supply reasons for

the conclusion recorded in the order dated 5th/7th March 2008 by producing more documents or by filing any number of affidavits. The law in this regard is well settled. Reference only need to be made illustratively to the decision being Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where the Supreme Court observed as under:

when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought, out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

15. Consequently this Court is unable to permit the Respondents to rely on documents which find no mention in the impugned order and which in any event have not been shown to the Petitioners.

16. The fundamental error in the order dated 23rd August 2007 passed by the Respondents terminating the licences of the Petitioners with immediate effect is that it was passed without any prior notice to them. Although this was plainly violative of the principles of natural justice and ought to have been set aside on that ground alone, this Court in its order dated 6th February 2008 directed a further hearing to be given to the Petitioners. This Court expected that the Respondents would use this opportunity to produce before the Petitioners the material on the basis of which the decision to terminate their licences was taken and give the Petitioners a chance of explaining their version with reference to the said complaints. The Court also expected that the Respondents would deal with the grounds raised by the Petitioners in their representations dated 26th and 29th August 2007. This Court also expected that the Respondents would produce a copy of the policy which was being cited by the Respondents to support their decision to discontinue the Petitioners licences.

17. Despite the above order, the position is no different as of today. Neither in the impugned order nor in the counter affidavit is any reference made to any complaint received vis-a-vis any of the Petitioners before this Court. A reference only is made to the letter dated 25th May 2007 received from Mr. Mathew John, Additional Member (Vigilance) in this regard. Since reliance has been placed on the said letter, it is reproduced hereunder in full:

Mathew John

Additional Member (Vigilance)

D.O. 2007/VSS/DC/NR/73 New Delhi dt. 25.05.2007

Dear Shri Mathur,

Sub: Booking of luggage by unauthorized agents at New Delhi Railway Station.

A complaint was received in Vigilance Directorate, Railway Board, New Delhi that some persons at luggage Booking Office, Ajmeri Gate, New Delhi are booking a motorcycle against the due charges of Rs. 850/-. On this basis, a decoy check was successfully conducted in luggage booking office, New Delhi on 3rd May 2007. Two outsiders namely Ram Niwas Singh and Devender Kumar arranged immediate packing and booking of a motorcycle vide Luggage ticket No. 745536 issued from Counter No. 10. They were found demanding and accepting Rs. 2500/- from the decoy passenger against the due fare of Rs. 850/- only thereby charging Rs. 1650/- over and above the actual freight. Both were apprehended red handed while collecting money from the decoy passenger and handed over to RPF/NDLS for taking necessary legal action. RPF/NDLS has registered a case vide crime No. 174/07 u/s 144 Railway's Act.

A number of outsiders were also seen roaming in and around the parcel office. These persons were seen contacting passengers for booking their luggage. It was gathered that these unauthorized touts are working without any authority and without any fear of law in connivance with certain railway officials. Connivance of RPL and Commercial staff in allowing such activities cannot be ruled out. Such activities not only bring bad name and affect the image of railway administration but also divert the parcel office to other modes of transport leading to loss of railway revenue.

I, therefore, request that the machinery responsible for curbing such activities may be revived and made effective.

With regards,

Yours sincerely,

Sd/-

(Mathew John)

18. This Court finds no mention of the names of any of the Petitioners in the above letter. The two outsiders named in the letter i.e. Ram Niwas Singh and Devender Kumar are not Petitioners here. It is really understandable how the above letter can be treated as a material on the basis of which the Petitioners licences could be terminated.

19. As noticed hereinbefore in para 11-12 of the counter affidavit, while denying the contents of the corresponding paras of the writ petition, it is asserted that

the licences of the Petitioners were terminated "after an enquiry which revealed that the Petitioners in connivance with other unauthorised persons/touts were charging exorbitant rates from the general public" learned Counsel for the Respondents candidly stated that there was no document to show that any such enquiry was held. No report of any such enquiry is produced. Consequently, the above observation by the Respondents remains unsubstantiated by the record. It is a matter of concern that the Respondents have made such assertions which are not supported by the record.

20. In para 25 of the writ petition the Petitioners have detailed the manner in which the hearing took place pursuant to the order dated 6th February 2008 passed by this Court. In the counter affidavit there is a bald denial that the contents of the said para are "wrong hence denied." It is repeated that the Petitioners were given "a patient hearing for the grievances raised and were discussed in their presence/in presence of their authorised representatives." If the above were true then the impugned order does not reflect it. It makes no improvement on the counter affidavit earlier filed in this Court.

21. The operative portion of the impugned order reads thus:

You were given a patient hearing for the grievances raised and were discussed in presence of your authorized representative. You were granted license of Patti Packers at the station New Delhi long back but this license was renewed on yearly basis and you were fully aware of the facts that license are terminable at any stage. The licenses were therefore, renewed till your services were required by the Railway administration. Since no written agreement was executed with you and therefore, Railway Administration is not bound to given any show cause notice to you. You had to work on the terms and conditions as laid down in the permission letter as no particular policy is available in this office as well HQ office. However, there were several instances pointed out by SSM/NDLS regarding indulgence in illegal activities, overcharging which resulted in maligning of the image of the Railway Administration in the eyes of the bonafide customers. Sr. Divisional Security Commission/RPF has been written to curb illegal patti packers, if any, immediately.

As the Railway Administration has decided to disband such facilities of Patti Packers. Your services are no longer required. Moreover, the Sr. station manager who observed your working from time to time have confirmed the above facts which indicates that there is no point for consideration of the issue raised by you for continuation of the license anymore.

22. This Court finds the impugned order to be totally unsatisfactory and not supported by the records of the Respondents. Unless the Petitioners are confronted with specific complaints made against each of them, it is simply not possible for the Respondents to come to the conclusion that each of them was indulging in illegal activities in connivance with the Railway staff. It is too sweeping an allegation that renders the decision arbitrary. The Railways being a

monopolistic State entity cannot be permitted to act arbitrarily and in violation of the Petitioners' fundamental rights under Article 14 of the Constitution. The action of terminating their licences had adverse consequences for them. The reliance placed on the decision in Chandu Lal is misplaced. The question that arises here concerns the fairness and reasonableness of the action of a State owned entity and that has to be tested on the touchstone of Article 14 and not the Transfer of Property Act.

23. The Petitioners are persons belonging to the economically weaker section of the society. They have been operating as patti licence holders for over two decades under valid licences. To be told overnight that their licences are terminated on account of certain illegal activities without, till date, being offered any valid explanation for such a conclusion, is both arbitrary and unreasonable. The so called "decision of the Railway Administration to disband the facilities of Patti Packers" is not contained in any document placed on record. learned Counsel for the Respondent was candid that there is no document to show that such a policy decision was taken. He is also not able to explain how, despite the above assertion, there are patti packers still operating in the New Delhi and Nizamuddin Railway Stations. Even on this aspect the situation is no different from what it was in the first round of litigation.

24. This Court is therefore not able to sustain the impugned order dated 5th/7th March 2008 passed by the Respondents. The order dated 23rd August 2007 passed earlier by the Respondents has already been quashed by this Court by its order dated 6th February 2008.

25. Consequently, these writ petitions are allowed. The Respondents are directed to restore the licences of each of the Petitioners forthwith.

26. The petitions are accordingly allowed with costs of Rs. 10,000/-which will be paid by the Respondents to each of the Petitioners within a period of four weeks.