

(2024) 03 PAT CK 0005

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 368 Of 2023

Puja Travels Hotel Paradise

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 06-03-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 21
Railways Act, 1989 — Section 2(29), 143
Railway Protection Force Act, 1957 — Section 2(c)(b), 3, 3(1)
Code Of Criminal Procedure, 1973 — Section 41(i)(ii)(b), 41A

Citation : (2024) 03 PAT CK 0005

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Prashant Kashyap, Dr. K.N. Singh

Final Decision : Allowed

Judgement

1. The petitioners are proprietorship travel agents. Petitioners No. 1, 2, and 3 are primarily authorized rail e-ticket agents of IRCTC. The rest travel agencies are further authorized by the petitioner no. 01, 02, and 03 travel agents as their Retail Service Proprietor (RSP) to book the railway e-tickets and manual tickets. Thus, all the petitioners are performing their duties as Principle Service Provider (PSP) or Retail Service Provider for sale and advance booking of Railway e-tickets. They have their centers for e-ticketing at their respective offices outside the premises of Patna Railway Station and Rajendra Nagar Railway Station.

2. The petitioners have jointly filed the instant writ petition praying for the issuance of appropriate raids thereby, prohibiting the Railway Protection Force (RPF) deployed in Patna Junction, Danapur Junction, and Rajendra Nagar Terminal from conducting illegal raids outside their jurisdictional limits, search, and seizures without obtaining consent and giving pre-raid information to the local police station within whose jurisdiction the offices of respective travel agents were situated. The petitioners. The petitioners have also prayed for a

declaration that initiation of proceeding under Section 143 of the Indian Railways Act, 1989, against the petitioners' consequent arrest of the travel agents production of the arrested persons before the Railway Magistrate, Patna, and remanding them to judicial custody are bad in law, and violating Article 14, 19 and 21 of the Constitution of India as well as the decision of the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*, reported in (2014) 8 SCC 273.

3. They have also prayed for consequential reliefs.

4. The case of the petitioners is that the petitioners as travel agents have been working as Retail Service Providers by booking authorized railway e-tickets in which public money is spent and there is no public interest involved with regard to their act of selling railway e-tickets. Petitioners No. 1, 2, and 3 are the Primary Service Providers under IRCTC. The rest petitioners are the Retail Service Providers to book railway e-tickets and manual tickets for a certain period of time as per the agreement with the IRCTC.

5. Thus, petitioner no. 01, Puja Travels has been authorized to book railway e-tickets, using the passcode of M/s Jayaswal Enterprises Pvt. Ltd. Petitioner no. 4 is authorized to book Railway e-tickets as per Railways e-ticketing terms and conditions using the passcode of M/s Birdres Technologies Pvt. Ltd franchise system terminal connected to IRCTC system. Petitioner no. 5 is a Retail Service Provider under Principle Service Provider under Spice Money Ltd. To book Railway e-tickets. Similarly, petitioner no. 06 and petitioner no. 7 are the RSPs under PSP M/s Jayaswal Enterprises Pvt. Ltd. To book Railway e-tickets. Petitioner no. 8, is a retailer of M/s Birdres Technology Pvt. Ltd., which is one of the principal service providers under IRCTC. Further, the case of the petitioners is that the petitioners being the travel agents book tickets as per demands of the customers from their respective offices, situated within the jurisdiction of different police stations in the city of Patna, Danapur, and Rajendra Nagar. None of the offices of the petitioners are situated within the platform or passenger area of any of the aforesaid railway stations. However, the grievance of the petitioners is that members of the Railway Protection Force (RPF) in utter violation of their jurisdiction as described in the Railway Protection Force Act, habitually conduct illegal raids in the offices of the said travel agents. The petitioners contend that such raids were periodically conducted by the RPF for illegal gratification in the name of monthly wasooli. According to the petitioners, they do not have any jurisdiction to conduct any raid outside the passengers area. It is alleged by the petitioners that on different dates, the members of the RPF under the leadership of respondents no. 6, 8, 9, and 10, conducted raids in the respective offices of the petitioners and seized some articles under the seizure list and submitted prosecution under Section 143 of the Indian Railways Act. Moreover, while arresting the proprietors and/or the employees of the petitioners/travel agents, they did not comply with the direction of the Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra). Subsequent to their arrest, they were produced before the Railway Magistrate, Patna, and on some occasions, they were remanded to

judicial custody. It is contended by the petitioners that the petitioners are entitled to carry on business, trade and commerce, in accordance with law. They are either Principle Service Providers or Retail Service Providers under IRCTC, and they have the right to conduct their business, in accordance with the law, and hindrance in opening their business by the State Authority violates Article 19(1)(g) of the constitution of India. The respondents suffice a counter affidavit wherein, they have denied the entire allegation made out by the petitioners in the writ petition. In the counter affidavit, it is admitted that the petitioners are registered agents of IRCTC, and as per the demands of the passengers they book e-tickets for the passengers, as per the terms and conditions of IRCTC. However, during festival seasons, the demand for tatkal tickets increases, which causes big queues of public/ passengers before the railway reservation counters for the booking of tatkal tickets. Despite their best attempts, many passengers could not get a confirmed ticket. It is alleged that the passengers, who do not get confirmed tatkal tickets during festival seasons, usually approach the IRCTC agents, and the tickets are made available to them at a heavy price. It is also stated on behalf of the respondents that to facilitate the general public for booking of tatkal tickets, IRCTC opens the links for aforesaid agents after 15 minutes of opening the link for the general public, so that the general public may get the first chance to book tatkal tickets. The allegation against the petitioners is that during the first 15 minutes, the agents used to book aforesaid Tatkal tickets by creating and using multiple private IDs. Users of such private IDs, by these agents, are strictly prohibited and against the terms and conditions prescribed by IRCTC for these agents. Purchasing tickets using private IDs by travel agents and selling them to different persons is an offence under Section 143 of the Railways Act. In order to curb the aforesaid practice, on the request of IRCTC, the RPF conducted raids in the offices of the petitioners and the other agents and registered case against them under Section 143 of the Railways Act because they violated the terms and conditions of the IRCTC and purchase tickets using their personal IDs. There was an allegation that the travel agents used to sell these tickets at high prices. It is further stated by the respondents that during raids, the RPF officers not only got e-tickets from the possession of the agents but also got manual/counter tickets which cannot be purchased by the RSPs. IRCTC authorized the travel agents to book online tickets through their assigned IDs only. But the travel agents used their private IDs to purchase online tickets which are forbidden and illegal, according to Section 143 of the Railways Act. Therefore, the RPF officers conducted raids in the offices of the authorized travel agents of IRCTC, found the case against them, and booked them under Section 143 of the Railways Act. It is further contended on behalf of the petitioner that none of the provisions of the RPF (Amendment Act, 2003) has been violated in conducting the raid. The respondents further contend that the "passenger area" does not include only the railway platform, train, and yard, it also includes other areas that are frequently visited by the passengers. The offices of the agents are in and around Patna Station, which is frequently visited by passengers for booking tickets and thus, the offices of these agents fall under

the ambit of "passenger area". For the interest of the passengers, the raid in question was conducted and there is no illegality in it.

6. The petitioners have filed a rejoinder to the aforesaid counter affidavit denying such allegations which is specifically stated that the petitioners never indulged in online booking of tickets on some private IDs. Moreover, IRCTC has its own rules and regulations formulated for reserved e-ticking service. For any illegal activity, the said terms and conditions made by IRCTC and duly approved by the Railway Board make the provision of major penalties for any illegal activity by payment fine to the tune of Rs. 25Lakhs and suspension of PSP for three months. Therefore, Rule 143 of the Railways Act, is not applicable and the petitioners were wrongly subjected to a criminal case.

7. Mr. Rajendra Narayan, learned senior counsel on behalf of the petitioners submits that even if the allegation of the respondents is accepted on its face value, the petitioners cannot be held liable under Section 143 of the Railways Act. The sum and substance of the allegations against the petitioners are that during the first 15 minutes of opening of e-counter. The private travel agents purchased tatkal tickets by using their own user IDs, thereby depriving general passengers from getting tatkal tickets. It is urged by the learned senior counsel on behalf of the petitioners that the offices of the travel agents are not within the passenger area of any of the stations where the raids were conducted. They fall outside the passenger area. The Railway Protection Force (RPF) has not received even a single complaint from a private person that due to the illegal act of the travel agents hoarding of e-tickets under the Tatkal Scheme within 15 minutes causes deprivation to the general passengers. Therefore, the raid was conducted without any specific complaint or allegation. The petitioners came up with a case that in order to run a business, they used to pay illegal gratification to the members of the Force. When there is no allegation of illegal activity against any of the petitioners suo motto raid in the offices of the travel agents speaks a volume against the conduct of the respondents. It is also submitted by the learned senior counsel on behalf of the petitioners that the allegation against the petitioners does not constitute an offence under Section 143 of the Railways Act.

8. Under the backdrop that no complaint was made by any passenger against the travel agents. Let me first consider, whether, Section 143 of the Railway Act is applicable in the instant case or not. Section 143 of the Railway Act is a penal provision for unauthorized carrying on all business procuring and supply of Railway tickets. The provision runs thus:

"143. Penalty for unauthorized carrying on of business of procuring and supplying of railway tickets.—(1) If any person, not being a railway servant or an agent authorised in this behalf,—

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to

carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.”

9. A plain reading of Section 143 states that the penal provision does not apply to a reservation or an agent authorized on this behalf. If any person, other than a Railway servant or an agent authorized on this behalf carries on any business of procuring and supplying railway tickets, he shall be punishable with imprisonment for a term that may extend to three years or with a fine that may extend to 10,000/- rupees or with both.

10. The petitioners are indisputably, the Retail Service Provider/which agent of IRCTC. The IRCTC appoints Principle Service Providers and Retail Service Providers on certain terms and conditions. Clause C of the terms and conditions describes penal provisions. The penal provisions as stated in the terms and conditions are reproduced below:

C. Penalty Provisions

1. All fraudulent activities like Overcharging, booking tickets through personal user id's, creating multiple Personal user id's, Sharing of access credentials/RSP ID, Booking/cancellation of e-tickets in connivance with middle men/Third party, besides other irregularities, will be dealt strictly. Punitive action will be taken for any misconduct/Irregularities/Non-compliance of the terms and conditions by invoking clauses 4.9 read with 19 (Internet Café Agreement) and 20 (B2B Agreement).

2. The penalties for Irregularities/Misconduct/Non-Compliance of PSPs/RSPs will be as under:

S.No

Nature of Irregularities

Penalty Provision

(1) Major Irregularities

Software Tampering: Any activity restricted by IRCTC like Cases such as: a) Sharing of Access credentials, White Labelling, unauthorized branding, Tatkal Robot Facility, saving booking form either at server or at client machine or

allowing Tatkal form to be opened before stipulated Tatkal time or during the banned time period, use of technology for gaining unfair advantage in Ticket booking, Technical problems like making changes without proper testing etc.

Misuse of IRCTC Website/IRCTC Rail Connect Mobile App: Any activity restricted by IRCTC like cases such as:

b) Modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative work forms, transfer or sell any information from IRCTC Website/ IRCTC Rail Connect Mobile App. Sale of Illegal Scripting/ Automated Software Tools by PSP to its RSPs or any individuals for gaining advantage of booking tickets through IRCTC Platform using personal User IDs.

a) A penalty Rs.25 lakh + Taxes will be imposed per case on PSP and the services of PSP will be suspended for three months.

And

Cases involving cyber act violations will be reported to Cyber Crime Police as well as RPF (Railway Protection Force).

b) A penalty Rs.10 lakh + Taxes will be imposed per case on PSP and the services of PSP will be suspended for 3 month.

And

Cases involving cyber act violations will be reported to Cyber Crime Police as well as RPF (Railway Protection Force).

ii.

Un-authorized access – Cases such as: Sharing of access credentials to web services, Sharing of RSP ID, Engagement with any other third party in any manner whatsoever to sell e-tickets by any mode or manner including a e-commerce platform operating through a website or Smartphone application or tablet application, Unauthorized Sale/Transfer of Agency, etc.

A penalty of Rs.20,000/- + Taxes per case, of a complaint, will be imposed on PSP and the RSP ID of such outlet will be permanently deactivated

And

Cases involving cyber act violations will be reported to Cyber Crime Police as well as RPF

Iii.

Point of sale fraud – Cases such as: Overcharging, nonpayment of refunds like TDR refund claims, non-refund of cancellation amount within the stipulated period, charging of cancellation charges, False TDR Claim

1. A penalty of Rs.20,000/- + Taxes per case, of a complaint, and

2. A penalty of double the amount of such overcharging/non- payment + Taxes will be imposed on PSP.

3. The RSP ID of such outlet will be permanently deactivated.

And

4. Case will also be referred to RPF if found indulged in touting activity using personal ID

iv.

Non compliance of Booking/cancellation mandates – Cases such as: Faking as a normal user and booking on website using multiple personal user Ids for commercial gains, Manipulation of ERS, sale of I tickets/Counter tickets, Booking of benami tickets, Transfer or resale of tickets, blocking accommodation giving fictitious names, cancellation of ticket without the knowledge of customer, Non filing of TDR on request of Customer, Booking/cancellation of tickets in connivance with middlemen/Third party. Booking request/collection of payment from Unauthorized web based platform.

A penalty of Rs.20,000/-

+ Taxes per case, of a complaint, will be imposed on PSP and the RSP ID of such outlet will be permanently deactivated

And

Case will also be referred to RPF if found indulged in touting activity using personal ID

(2) Minor Irregularities

i.

Cases such as:

a) Any RSP outlet, if found without proper display of sign board indicating the IRCTC instructions viz Service charges, Payment gateway charges, without registration certificate being displayed;

b) Non issuance of money receipt by RSP;

c) RSP Address Mismatch;

d) Any advertisement in print or press media without prior permission from IRCTC in writing;

e) Misuse of IRCTC LOGO without prior permission from IRCTC.

1. In the first instance, a penalty of Rs.5,000/- + Taxes per case, of a complaint, will be imposed on PSP with a warning to RSP.

And

2. In the second instance, a penalty of Rs.5,000/- + Taxes per case, of a complaint, will be imposed on PSP and RSP ID will be permanently deactivated.

ii.

Cases such as;

A penalty of Rs.5,000/- +

a) In the absence of written request/Electronic request of customer for booking/cancellation of ticket.

b) If correct Mobile No. of one of the passengers is not mentioned at the time of booking

Taxes per case, of a complaint, will be imposed on PSP.

(3) Other provisions

i.

If complaints are received and proved against 5 different RSPs of PSPs in 01 month

A show cause notice will be issued to PSP.

ii.

If between 6-10 complaints are received and proved against different RSPs of a PSPs in 01 month

Services of PSP will be suspended for 01 month.

Iii.

If between 11-15 complaints are received and proved against different RSPs of a PSP in 01 months

Services of PSP will be suspended for 03 months. If two such incidences are reported, the PSP will be permanently deactivated.

iv.

If more than 20 complaints are received and proved against different RSPs of a PSP in 01 month

Services of the PSP will be suspended for 06 months. If two such incidences are reported, the PSPs will be permanently deactivated.

However, i) the number of instances for imposing penalty will be counted based on date of occurrence of incidence as against date of reporting.

ii)The complaints arising out of bookings made through PSPs IDs will only be counted for penal action against PSPs

iii) The complaints arising out of bookings made through Personal IDs will be taken up through RPF under Railway Act for touting activity. Such complaints for tickets booked on personal ID will not be counted for the purpose of suspending PSPs on the criteria of number of complaints

(4) For irregularities committed by RSP, necessary action will be taken against respective PSP also in addition to whatever action (like deactivation of RSP as decided by competent authority) taken against RSP. However, in case of criminal activity of RSP, necessary action will be taken by IRCTC through RPF against RSP.

5) Process of Complaint case:

i. Once a complaint is received, explanation will be called from the PSP of the RSP who is involved in the complaint.

ii. Once the irregularity is established, a show cause notice is issued giving 5 days time to reply. 3 days time is awarded for payment of penalty.

iii. If penalty imposed is not received within the stipulated period the same will be debited from RDS account of the PSP or if no RDS account is maintained, the services of PSP will be made offline till such time the amount is received from the PSP.

iv. The Competent Authority can however, take appropriate higher action against the erring PSP/ RSP, if deemed necessary including termination in the first or any instance in accordance with the provisions of the Agreement.

v. Any other complaint, other than those mentioned above, is received against RSP/PSP in violation of IRCTC/Indian Railways rules and regulations, action will be initiated as per the decision of the competent authority case by case.”

11. Clause 5 of the penalty provision delineates the process of complaint case. Since PSPs and RSPs are appointed on the terms and conditions of IRCTC duly approved by the Railway Board, any alleged fraudulent activity like over-charging on booking tickets through personal user IDs, creating multiple personal user IDs, sharing of access credentials/RSPs IDs, booking/cancellation of e-tickets in convenience with middle-man/third party, etc., is subjected to penalty and cancellation of the agencies by the IRCTC as per Clause C of the agreement. Therefore, even if, some allegation is found against any authorized agent, it is the duty of the authority to inform IRCTC to take action in terms of penalty provisions. The petitioners being the authorized agents of IRCTC cannot be held liable for committing an offence under Section 143 of the Railway Act, 1989, even assuming the travel agents use personal IDs to purchase e-tickets.

12. The learned senior counsel on behalf of the petitioners has advanced the second limb of his argument, submitting that the raid, search and seizure, and subsequent filing of a complaint under Section 143 of the Railways Act by the RPF officers is illegal. In view of the fact that no such offence was committed within the “passenger area”.

13. Section 3 of the Railway Protection Force Act, 1957 (hereafter described as RPF Act) deals with constitution of the force. Section 3 runs thus:

"3. Penalty for unlawful possession of railway property.--Whoever is found, or is proved to have been, in possession of any railway property properly reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable -

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees."

14. Sub-Section 1 of Section 3, clearly states that Railway Protection Force is constituted for better protection and security of the Railway property. Section 2(c) (b) defines "passenger area" which shall include railway platform, train, yard, and such other area as is frequently visited by passengers.

15. It is contended on behalf of the respondents that the private booking counters of travel agents are frequently visited by the passengers and, therefore, the said booking counters are "passenger area" and RPF can conduct raids in those booking counters. Now, the question for adjudication is as to whether any place outside the platform, train, and yard can be described as a "passenger area" on the ground that it is frequently visited by passengers.

16. Section 2(29) of the Railway Act, 1989 describes a passenger as a person, traveling with a valid pass or a ticket.

17. The booking counters are visited by persons who are the customers of tickets. Unless and until they get valid tickets, they are not passengers. In the Railway counters situated on the platform, people standing in a queue to purchase tickets are customers, when tickets are purchased and they are authorized to travel by train, they are passengers. The definition of the "passenger area" is to be construed, taking into account, the definition of passenger. Moreover, if both the definitions of passenger, contained in the Railway Act and "passenger area" contained in the Railway Protection Act are to be taken into consideration together, the word passenger area cannot be read in isolation from the platform train and yard because the definition of passenger denotes a person who either travels in a train or having a valid ticket to travel. Both definitions contain an enumeration of specific words. The subjects of enumeration constitute a class or category, i.e., the passenger. The class or

category is not exhausted by that enumeration. The general terms, therefore follow the enumeration and there is no indication of different legislative intent. Thus, the following are the ratio in the case of Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura and others, reported in (1972) 2 SCC 442 and U.P. SEB v. Hari Shankar Jain, reported in (1978) 4 SCC 16. the doctrine of ejusdem generis was applied to search out the meaning of a particular word.

18. The same principle, if applied in the instant case, it would be found that the word search other area as is frequently visited by passengers is to be interpreted, in relation to Railway platform, train, and yard. This is also to be noted that in the definition of "passenger area" the words Railway platform, train, and yard and the phrase such other area as is frequently visited by the passengers are joined with the word 'and' which is conjunctive and not disjunctive.

19. Therefore, by no stretch of the imagination, it could be stated that the passenger area is extended outside the platform area and the jurisdiction of the RPF is extended to any place for conducting raid. Therefore, I do not find any other alternative but to hold that the raids conducted in the offices of the petitioners by the RPF officers and lodging prosecution against them under Section 143 of the Railway Act are illegal and beyond the statutory power of the Railway Protection Force.

20. My ultimate decision may be illustrated by the following example. For the convenience of the passengers, either the Indian Railways or IRCTC has opened booking counters at places where there is no railway connectivity to facilitate the passengers of such areas to purchase tickets for their journey from the nearest railway stations. Is it possible for the RPF to conduct a raid in those booking areas, where there is no railway platform, operation of train services, and yard? The answer must be in the negative.

21. The question inter alia arises then, what will be the remedy if the Retail Service Providers adopt unscrupulous means to purchase tickets, using their own IDs? The answer lies in the penalty provision contained in part C of the terms and conditions of the IRCTC agreement for the appointment of PSPs and RSPs.

22. If any such allegation comes to the officers of the RPF, the RPF officers shall forward such allegation to the IRCTC for taking necessary action against the unscrupulous travel agents, in terms of part C of the terms and conditions of the agreement between IRCTC, PSP, and RSP.

23. For the reasons stated above, the entire activity of the RPF, of conducting raid, search and seizure, and submission of prosecution is held to be illegal and void ab initio. The criminal proceedings under Section 143 of the Railway Act, against the petitioners be quashed.

24. With regard to the petitioners' prayer for taking action against the officers of the RPF for unlawful arrest, violating the guideline of the Hon'ble Supreme Court

in Arnesh Kumar (supra), the petitioners are given the liberty to take action against the concerned officers for non-compliance of the mandatory provisions of Section 41A and Section 41(i)(ii)(b) of the Code of Criminal Procedure.

25. With the above order, the instant writ petition is allowed on contest. However, there shall be no order as to cost.

26. Let a copy of this order be sent to the respondents no. 4-10, for information and future action.