

(2008) 02 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1764 of 2008

Railway Physically Handicapped, Self Employee (STD/ISD/
PCO, Booths Operators Welfare Association)

APPELLANT

Vs

Senior Divisional Commercial Manager, Divisional Office,
Commercial Branch, South Central Railway, Chief Commercial
Manager, South Central Railway, Railway Nilayam, Divisional
Railway Manager, South Central Railway and General
Manager, South Central Railway

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2008) 3 ALD 357 : (2008) 4 ALT 47

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : B.P. Raju, for the Appellant; T.S. Venkata Ramana, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court issued rule nisi on 07.02.2008.

At the request of the learned Counsel on record, though the matter is coming up under the caption "Interlocutory", it is being disposed of finally.

2. The writ petition is filed for issuance of writ of mandamus declaring the action of the respondents in revising the commission to 100% from the existing commission of 10%, as illegal, arbitrary and violative of Article 21 of the Constitution of India, and to set aside the letter bearing No. B/C/14/STD-PCO Booths/2005-2006, dated 06.11.2007, and consequently to direct the respondents to continue the existing commission of 10% to the petitioner association and to pass such other suitable orders.

3. Sri. B.P. Raju, learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and

would maintain that the action, which had been impugned, is totally arbitrary and illegal and the same is violative of Article 21 of the Constitution of India as well.

4. On the contrary, Sri T.S. Venkata Ramana, the learned Standing Counsel representing the respondents had taken this Court through the contents of the counter-affidavit and would maintain that inasmuch as it is a policy decision, normally this Court would be slow in interfering with such policy decision. The learned Counsel had also pointed out to the relevant portions of the counter-affidavit and would maintain that in the light of the specific stand taken in the counter-affidavit, the petitioner association is not entitled to any relief whatsoever.

Heard the learned Counsel on record and perused the entire material available on record.

5. The petitioner association is questioning the letter bearing No. B/C/14/STD-PCO Booths/2005-2006, dated 06.11.2007. The relevant portion of the said letter reads as hereunder:

The details of STD/PCO booths and the percentage of commission being collected from the licensees are as under.

Also, it is advised to collect and license fee from the above licensees duly increasing by 10% over previous year's value. All other conditions circulated earlier stands good.

Ensure implementation of the instructions and report any deviation in this regard.

For Sr. DCM/BZA

6. It is stated that the first respondent enhanced the Telephone Rental Commission from 10% to 100% as per the Railway Board Circular, dated 25.10.2007. But in the said circular elsewhere it is stated to enhance telephone rental commission to 100% from the existing commission of 10%. As per the impugned letter, if any licensee is not willing to continue the license against payment of revised percentage of commission, he will not be permitted to operate booth.

7. Further it is stated that if 100% commission is paid to the respondents, the members of the petitioner association have no livelihood and it is difficult for them to maintain their families. In spite of that, the petitioner association is unable to maintain telephone land licence fees and electricity charges, since at present electricity charge per unit is Rs. 6.25 ps. approximately per month it comes to Rs. 1000/-. For operating the business round the clock they require three staff members/telephone booth operators. The minimum salary for each member is Rs. 2000/- per month, then the total salary for three members comes to Rs. 6,000/- per month. The ground rent is Rs. 3,700/- per month and other expenses are Rs. 2,000/-.

8. It is also stated that the Railway Board vide letter dated 29.12.1981 provided for installing attended type public telephone booths at Railway Stations by physically handicapped persons at free of charge on approach by P & T Department.

9. It is further averred that the Railway Board issued letter dated 26.08.1994 for allotment of STD/ISD/PCO Booths space to set up pay phone booths allotted to physically handicapped persons, who are handicapped 40% and above.

10. It is further averred that the members of the petitioner association have been running telephone booths at Railway platforms since 1988 and they are entirely depending upon this telephone booths only and except that they have no other source of income for their livelihood. All the members of the petitioner association are age barred and they are not eligible for any jobs.

11. It is further averred that the petitioner association made representation to the respondents on 27.12.2007 for reduction of revised commission of 100% from the existing commission of 10%. The first respondent rejected their claim by letter dated 22.01.2008 stating that as per the Railway Board's instructions, the licences of STD/PCO booths managed by physically handicapped persons are extended from 28.10.2007 to 27.10.2009 on payment of highest commission being paid by the other STD/PCO booth operators at that station. In the said letter, it is further stated that all the STD/PCO operators have to pay 100% commission with effect from 28.10.2007 to 27.10.2009 at Vijayawada, Tenali, Ongole, Gudur, Tadepalligudem, Rajahmundry, Tuni and Samalkot, and at Chirala 60% commission, and that they have to execute agreements for the extended period immediately, failing which, licences would be cancelled without further notice. In such circumstances, it is stated that the petitioner association, having no other option approached, this Court praying for appropriate reliefs.

12. In the counter-affidavit filed on behalf of the respondents, it is stated that the deponent i.e., the President of the petitioner association is a licensee running STD/PCO booth on platform No. 7 of Vijayawada Railway Station and that this writ petition is filed questioning the revision of license fee (% of commission to be apportioned to Railway) payable by 13 STD/PCO booth licensees, who are under extension of license period, and by suppressing vital facts.

13. There are two types of licensees (STD/PCO booth licensees) in Vijayawada division. First type is licensees running STD/PCO booths under extension of license period, and they are 13 in number and infact they were not allotted under Tender process. In second type, there were 39 licensees running STD/PCO booths selected under Tender/Bidding process at A & B Category Stations in the division.

14. The Ministry of Railways had issued comprehensive policy guidelines vide letter No. 2001/TG.IV/PCO/Policy, dated 22.04.2002, wherein, the Ministry stipulated the number of booths to be permitted on each platform of each category of Stations (Railways Stations classified into "A-I, A, B, C, D, E and F"

category basing on the earnings) and prescribed Tender Process" for selection of STD/PCO booth licensee in case of "A, B and C category stations. The said policy stipulated that all STD/PCO booths should be allotted only three category persons i.e. (1) Educated un-employed youth (50% booths), (2) Physically Handicapped (25%) and (3) Women (25%) duly earmarking those booths to persons belonging to SC (15%) ST (7.5%), OBC (27%) and others (50.5%). Thus, the Ministry of Railways had formulated a policy (Tender policy) affording opportunity to all persons to participate and get STD/PCO booths. Accordingly, the division called for tenders duly assessing number of STD/PCO booths to be permitted on each Station/Platform and allotted 39 STD/PCO booths under tender process at "A & B Category Stations", and they are running the booths duly paying 100% commission (30 out of 39 licensees) to Railways since three years.

15. The deponent and 12 others (who are Physically Handicapped Persons) were permitted to run STD/PCO booths at 10 "A & B" Railway Stations on the division against payment of nominal Ground Rent (Rs. 3467/- per annum for Vijayawada Railway Station) and 10% Commission earned from their Service Providers. The Ministry of Railways vide letter dated 11.03.2005 advised Zonal Railways to permit physically handicapped persons upto 27.04.2007 provided their working is satisfactory. Accordingly, the deponent and 12 others were allowed to run PCO/STD booths against payment of nominal ground rent and 10% commission. In this connection, it is pertinent to mention here that the deponent and 12 others have not underwent any Tender Process" for allotment of STD/PCO booths except on a formal request that too before issuing a Comprehensive Guidelines by the Ministry of Railways during the year 2002. Their licenses were extended for three months from 28.04.2007 to 27.07.2007, and later further three months from 28.07.2007 to 27.10.2007, basing on the instructions of the Ministry of Railways.

16. The Ministry of Railways vide letter No. 2005/TG.IV/10/STD/24/Policy, dated 25-10-2007, stated that the license period of STD/PCO booths, which were expired on 27.10.2007, can be extended up to 27.10.2009, subject to payment of highest commission being paid by STD/PCO booth operators at that particular station subject to minimum of 10% commission. Accordingly, the division has reviewed each case of such 13 STD/PCO booth operators (physically handicapped booth operators who are operating booths without underwent any tender process) and issued instructions for collection of revised license fee (% of commission to be apportioned to Railway) vide letter No. B/C 14/STD-PCO Booths/2005-06, dated 06.11.2007, to the Station Managers as well as intimation of conditional extension of license period upto 27.10.2009. If the deponent and other 12 licensees desire to continue the license, they should pay Revised License Fee. Otherwise, they have to vacate the premises as their license period is already over.

17. The representation of the petitioner was considered as per the policy and the decision of the competent authority was conveyed vide letter No. B/C 14/STD/

PCO booths/2005-2006 dated 22.01.2008.

18. It is further averred that the Railway Administration had called for tenders for allotment of these 13 STD/PCO booths also (belonging to the deponent and 12 others) along with others vide notification dated 08.05.2007 treating that their license period was going to expire and to vacate the premises. In response to the notification, the administration has received 86 Tender Forms for four booths at Vijayawada Railway Station alone. The bidders offered 100% commission to Railways. In fact, the deponent's wife namely Smt. Aruna Kumari also offered 100% commission for STD/PCO booth at Vijayawada Railway Station. The deponent's relatives have also participated in the said tender process and offered 100% commission. It is not out of place to mention here that other than the commission, the petitioner association will be getting service charges from the clients, who use the booths, and the same will be Rs. 2/- for every call (STD) etc. It is false to state that their entire commission charges are taken by the railways.

19. The Ministry of Railways prescribed tender policy even for allotment of STD/PCO booths under Physically Handicapped quota. As the petitioner association made a request to continue them on any terms the authorities considered and issued this proceeding as it is followed with other STD booths as mentioned above. The members of the petitioner association are enjoying STD/PCO booths quite from long time without undergoing any tender process, and filed this writ petition suppressing the facts. The Railway Administration had issued instructions intimating about conditional extension of license period upto 27.10.2009, and for payment of revised license fee keeping instructions of the Ministry of Railways.

20. In reply to the averments made in para Nos. 3 to 4 of the affidavit filed in support of the writ petition, it is stated that the averments are misleading and incorrect. As many as 30 STD/PCO booth licensees in the division (selected under tenders) are paying 100% commission towards license fee to Railway Administration, and these licensees are running their booths without any problem. The petitioner association had raised false allegations for sympathy of the Court. In reply to specific allegation at Para 3, the relevant extract of Railway Board's Circular dated 25-10-2007 is reproduced:

The matter has been reviewed and it has been decided that the contracts of Physically handicapped persons who are presently running STD/PCO booths at Railway Stations and whose contracts are expiring on 27.10.2007 or later upto 27-10-2009, may be allowed to continue and their contract may be extended after expiry of their contract upto 27.10.2009, provided that their working is satisfactory. However, other physically handicapped persons who are eligible for extension beyond 27.10.2009, shall however be eligible for extension as per their contract agreement. The above extension may be granted subject to following:

At A.B & C category Stations

a. Highest commission being paid at the station be charged while extending

contracts subject to a minimum of 10%.

b. In case no booth contract has been finalized on the basis of tender at A, B & C category stations, the commission charged will be the highest commission being paid at the station subject to a minimum of 10% which will get enhanced equal to the commission which gets fixed at the station as and when any booth is subsequently allotted on tender basis at that station.

it is stated that the licenses granted to the deponent and 12 others were renewed from time to time, despite the fact that the division had allotted remaining STD/PCO booths through tender process to the persons belonging to Educated Unemployed Youth, Physically Handicapped Persons, and women since the year 2005. Last renewal of license was happened for the period from 28.04.2005 to 27.04.2007 in respect of 13 booths. Later, they were allowed to continue in the license for two consecutive extensions of three months each against payment of 10% commission as per policy. Finally, the Ministry of Railways vide above mentioned letter (extracted letter) stated that their continuance upto 27.10.2009 will be subject to payment of highest commission paid at that station. Accordingly, the division reviewed position in respect of the deponent and other 12 others and revised the license fee. Hence, there is no lapse on part of first respondent's office.

In reply to paras 5 to 10 of the affidavit filed in support of the writ petition, it is stated that the policy of allotment of STD/PCO is underwent drastic change, and that as per the present policy, allotment of STD/PCO at A, B and C category stations to be done as per Tender Policy among Educated Unemployed Youth, Physically Handicapped Persons and Women. In respect of D, E and F category Stations, allotment should be done on application basis subject to payment of predetermined commission. The deponent's booth and other 12 booths are situated in A & B Category stations, and their booths were not given under tender process, and further more they are enjoying booths quite long time.

These are the respective stands taken by the parties.

21. It is not the case of the writ petitioner that no uniform policy as such is being followed in the case of physically handicapped self employees. The specific stand taken by the respondents in the counter-affidavit is that this is a policy decision taken, apart from this aspect of the matter, the association had filed this writ petition. But this Court is of the considered opinion that the association members as such would have individual grievances.

22. Be that as it may, in the light of the specific stand taken in the counter-affidavit, this Court is of the considered opinion that in the light of the limitations imposed on this Court, exercising the power of judicial review in interfering with policy matters, this is not a fit matter to be interfered with.

Accordingly, the writ petition is hereby dismissed. There shall be no order as to

costs.