
(2002) 01 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3957 of 2001

Rajasthan Tourism Development Corporation Ltd.

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 420
Prevention of Corruption Act, 1988 — Section 13
Railways Act, 1989 — Section 137, 55

Citation : (2003) WLC 32 : (2002) 1 WLN 732

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—The present writ petition has been filed by the Rajasthan Tourism Development Corporation Ltd. after Board of Directors of the Corporation has resolved to impugn the First Information Report registered against a few of its functionaries.

2. It has been averred in the petition that the present Chairman, Shri Rajeev Arora and the Managing Director, Shri Raj Hans Upadhyay were appointed vide order dated 5.1.2001. Shri Rajeev Arora since his student days had been actively associated with youth wing of the Congress Party. According to the petition, he is still widely acclaimed in the Congress set up at both levels i.e. State Politics and the Central Politics.

3. It is alleged that Shri Arora was selected as one of the political targets to tarnish the image of present Congress Government in the State of Rajasthan. This assumption was drawn by the petitioner in the background that opposition wanted to take the advantage of such a propaganda in a bye-election which was to be held at the relevant time for Tonk Parliamentary Constituency. According to the allegations in the petition, a well calculated political design was pursued by one of the members of the Legislative Assembly belonging to Bhartiya Janata

Party, Shri Rajendra Singh Rathore who happens to be former Health Minister of the State. He attempted to tarnish the image of Shri Arora by writing to the Governor of the State. These instances quoted in the petition appear to have no ostensible link with the present controversy. However, these have been mentioned in the petition to show that action against the petitioner has political overtones.

4. A Luxury train is being run by the petitioner and the Indian Railways since 1982. The train has been fabricated by the Railways for the petitioner by equally sharing the costs. The train in its present form is operational since 1995. The petitioner has been performing the following duties:

- House keeping including catering on board as well as on ground.
- Maintenance of interiors, furnishings, decor etc.
- Designing, Printing and distribution of tickets
- Collection of revenue and maintenance of relevant records.
- Nodal agency for publicity, marketing and sales promotion.

5. The Railways are responsible for providing facilities necessary for operation of the train. Agreements between Railway and the petitioner have been executed from time to time. On 21.12.1994 a Memorandum of Understanding was signed whereby a new agreement was to be signed after manufacturing of the complete train. The new agreement admittedly has not been formally executed till date. According to a draft agreement, complementary tickets for tours are to be regulated as per Clause 9 which is reproduced as under:

9. That the powers for allowing complementary travel shall only be exercised by the Director General (Tourism), Department of Tourism, Director Traffic (Tourism), Railway Board and the Managing Director, Rajasthan Tourism Development Corporation.

6. Further, para 8.1 and 15.1 of the draft agreement between RTDC and Railways for Palace on Wheels are reproduced hereunder:

Draft by RTDC RTDC Comments Railways Railways Counter comment

8.1. The RTDC would be Railways would not share The original be working as nodal agency the cost either with RTDC retained. for marketing, or with the Department of promotion and publicity. Tourism for publicity done Foreign publicity will be in India or abroad may be done by the Ministry of replaced with two percent Tourism and Civil of the revenue generated by Aviation, Department of the Palace on Wheels Tourism, Govt. of India. during the preceding year, Railways would not with carry forward, would share the cost either be retained and accounted with RTC or with the for by RTDC for such Department of Tourism publicity done in India or for publicity done in abroad. India or abroad.

15.1. The powers of May be replaced by "The allowing complimentary powers for allowing travel will be exercised complimentary travel will by Railway Board, MD be exercised by Railway RTDC and DG Tourism Board, and MD RTDC, each Railways and RTDC/ may permit maximum 2 Department of Tourism passes per tmp with carry may nominate a forward facility. The cost of maximum of 8 or 10 complimentary travel in passes per month excess of quota will be (depending upon 4 or 5 borne by the the respective trips in a month). The parties. For marketing and cost of complimentary publicity purposes, RTDC travel in excess of the may permit complimentary above quota will be travel to media personnel, borne by the respective issue writers, etc. not parties. Issue writes, exceeding 4 per trip wtih media personnel more carry forward facility in than the stipulated Railways would be number will require informed with details at the prior approval of the end of each season in case Ministry of Railways. average exceeds.

7. The train which is known as Palace on Wheels has been envisaged to attract tourists, both Indians and foreigners. For marketing and publicity of this train, the petitioner and the Railways used to organise familiarisation tours. In such tours, media persons, travel agents and persons who could be useful for marketing strategies including officials of both parties to the venture are grouped to familiarise about the operation of train and to gain consequential publicity of the train in various ways. In the first run of the train only 38 tickets were sold, therefore, it was decided that first commercial run itself be utilised for familiarisation tour by using left over seats and in this connection journalists/ media persons, travel agents and other potential sources to agument the tourism were invited.

8. Since parliamentary bye-election for Tonk was fast approaching to malign congress party by targeting Shri Rajeev Arora, a raid was conducted under the stewardship of Dr. B.R. Meghwal (respondent No. 4). It is alleged that respondent No. 4 is close relative of Shri Kailash Meghwal, who was a candidate staged by B.J.P. at Tonk Parlimentary bye-election. Shri M.R. Kadole, Dy. S.P., C.B.I. was assigned to conduct the raid.

9. The surprise raid was consequently held on 8.9.2001 at Jodhpur Platform. It was alleged that first raid was conducted at 8.00 A.M. and no illegality was found according to the petitioner. It is alleged that at 3.30 P.M. Mr. Kadole, Dy. S.P. again returned to the train and raided from Jodhpur to Phulera for five hours. During this period the raid party let loose a tirade of various imaginary allegations against guests in the train. The petitioner has claimed that this was high handness of the C.B.I. Officials. The tour was conducted strictly in compliance of the rules and regulations.

10. The FIR consequently registered on 14.9.2001 is considered by the petitioner as a mere skeleton, bereft of any allegations much less containing evidence to constitute the impugned offences. The petitioner has claimed that allowing continuation of the investigation in such FIR would cause continuous financial

loss to the petitioner. It is latent abuse of the investigating power by the Agency which deserves to be nipped in the bud.

11. The FIR is impugned on the ground that if allegations in the FIR are taken on their face value, they do not prima facie constitute any offence. It miserably fails to disclose ingredients of offence punishable u/s 420 IPC so also no offence u/s 137 of the Railways Act, 1989 is made out. The present Railways can be described to be a non-government Railways and Section 55 can only be made applicable to such travellers who board the train as passengers. The invited legal guests were not expected to hold pass/ticket during familiarisation tour.

12. It has been alleged by the petitioner that it is sheer perversity that the guests were present on the train with intent to defraud RTDC. Mere use of Section 137 of Railways Act, 1989 does not disclose commission of any offence. It has further been claimed that no offence u/s 13(1)(d) of the Prevention of Corruption Act is made out. No allegations are made in the FIR. It is not indicated that who abused his position as a public servant who want to derive any advantage. The right of investigation comes only when there is a disclosure of commission of a cognizable offence which is missing in the instant case. It has further been claimed by the petitioner that CBI only gets jurisdiction to investigate such offences for which it is authorised in a State jurisdiction. The Corporation is a State Government's Body and thus the CBI does not enjoys any jurisdiction to investigate the alleged offences. The jurisdiction has been tried to be assumed by trying to implicate the Indian Railways.

13. After first hearing, learned Counsel for the petitioner was asked to submit copy of the list of persons who were travelling at the train. Consequently, learned Counsel filed list of passengers who were found travelling in the train.

14. After looking at the list, learned Counsel was asked a question that passenger at Serial No. 18 Mrs. K. Satyawati was supposed to be an invitee. As a guest, she was expected to board the train. In her place, Mr. Gyan Deep, Mrs. Radhika, Master Pradyum and Master Nihar boarded the train. It was put to learned Counsel for the petitioner as to what kind of invitation was issued to Mrs. K. Satyawati. Was it an invitation intended for her ? Wherefor any information on the invitation was incorporated that the invitation was transferable ? Whether it was specified on the invitation that it was valid for how many persons ?

15. Learned Counsel failed to answer any one of these questions. Such questions could be asked for other expected guests because in many of the lists of expected guests, it is not indicated as to invitation was intended for how many persons and whether it was transferable. Unless these questions are clear, naturely a lurking doubt looms large that as to who was the actual invitee. What were the terms of the invitation and who boarded the train. If there were so many loose ends, then they naturally require clarification/investigation.

16. In this petition, no attempt has been made by the petitioner to show any jurisdiction for inviting specific guests and leaving loose ends in their invitation.

When the petitioner comes to this Court to get FIR quashed, then every possible care is required to be taken by the petitioner to see that such question should be answered by material on record. In this background, it cannot be said that investigation is based on unfounded allegation. What would be the result of the investigation, cannot be predicted at this stage.

17. A reference may be made to the provisions of the draft agreement quoted hereinabove. There had been no blanket right with either of the parties to issue unspecified number of tickets. In the instant case, complimentary tickets have been issued beyond permissible number. Who will pay for the number exceeded has not been cleared in the petition. This obviously is a wrongful loss which can come as a loss to Railways thereby giving right to C.B.I. to investigate. Petitioner is a public enterprise. Its functioning has to be transparent. All suspicion should be cleared. The investigating agency has been held to be vested with the right to investigate by number of judicial pronouncements. Before an investigation is started the Investigating Officer has to satisfy himself that he suspected commission of cognizable offence. Further he has to satisfy himself as to the existence of sufficient ground for entering on investigation vide *State of Haryana and others Vs. Ch. Bhajan Lal and others*,

18. The Investigating Officer having known of persons travelling on the train without payments was entitled to know about their rights. The nature of invitation as alleged by the petitioner has not even been explained before this Court. Under these circumstances, it cannot be said that from the facts placed before this Court, a case of quashing the FIR is made out. There is no force in the petition. The same is therefore dismissed.