

(1999) 12 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 4475 of 1999

Ram Ashray Prasad Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Railways Act, 1989 — Section 11

Citation : AIR 2000 Patna 160

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Anjani Kumar, Nagendra Pd. Singha and Sanjay Kumar, for the Appellant; Rakesh Kumar, A. Kumar, M. Kumar, P.K. Shahi and Mukesh Thakur, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard learned counsel for the petitioner, learned counsel for respondent Nos. 1 to 5, as well as learned counsel for respondent No. 6.

2. This writ petition is directed against the order dated 30-4-99 (Annexure-6), addressed to the petitioner, whereby his licence to manage the erstwhile Harnaut Railway halt has been terminated after giving him one month's notice in accordance with clause 18 of the agreement inter partes (Annexure-1). The railway station at Harnaut was earlier a Halt. According to the regulations of the railway administration, a Halt, in contradistinction to a railway station or a junction, has to be manned by a private person in accordance with the agreement to be entered into by the railway. In other words, a railway station or a railway junction is managed departmentally. The railway administration in their wisdom decided to upgrade Harnaut Halt to a railway station, the consequential effect of which, inter alia, is that the petitioner's licence to manage the erstwhile Harnaut Halt was required to be terminated. Accordingly the railway administration issued the impugned order dated 30-4-99 (Annexure-6),

terminating the petitioner's licence after giving him one month's notice.

3. While assailing the validity of the impugned order, learned counsel for the petitioner submitted that the same is in the teeth of clause 18 of the agreement, which can be terminated after giving one month's notice only for the reasons specified therein, for example, breach of the terms and conditions of the agreement etc. I am unable to accede to the contention for the reason that there are two independent clauses in clause 18 which reads as follows :--

"(18) This Agreement shall have effect from 15-11-92 and shall be terminated upon one month's notice in writing on other side subject to the (sic) provide that should there be any breach of any of the condition of this Agreement by the local contractor of the local contract or shall become insolvent or enter into any composition for the benefit of or agreement with his creditors or have any distress levied on his property then and in any such case the Rly. Admn. shall be entitled to terminate the Agreement forthwith."

It is manifest from a plain reading of this clause that it consists of two parties. The 1st part deals with termination for undisclosed reasons after serving one month's notice which has been invoked in the present case. The 2nd clause deals with termination forthwith for various reasons, for example, violation of the terms and conditions of the agreement. The impugned order says that one month's notice has been given and also does not assign any one of the reasons mentioned in the 2nd clause. The irresistible conclusion, therefore, is that the 1st part of this clause has been invoked by the railway authorities and it cannot be faulted. The contention is, therefore, rejected.

4. Learned counsel for the petitioner next submitted that the decision to upgrade Harnaut Halt to the position of a railway station is uncalled for and administratively incorrect and inadvisable. Relying on an undated letter marked Annexure-5 from the railway administration to the District Magistrate, he submitted that the same represents the factual position arrived at by the railway administration while dealing with the issue according to which, in his submission, the upgradation would be wholly unviable. I am unable to accede to this contention either, pre-eminently for the reason it is basically and fundamentally an administrative decision.

4.1. Mr. Shahi, learned counsel for respondent No. 5, has rightly submitted that the powers of this Court under Articles 226 and 227 to interfere with such administrative decision and/or decisions pursuant to a policy decision are normally Immune from judicial reviewability. I am in this connection reminded of the illumine decision of England, reported in (1947) 2 All ER 680 (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation) wherein, speaking for the Court, Lord Green observed with a remarkable felicity of expression that the Courts must always remember that the act deals, not with the judicial act, but with an executive act. The limited grounds on which such an administrative order can be subjected to judicial review have also been indicated therein which are

bad faith, dishonesty, unreasonableness, attention given to extraneous circumstances, disregard of public policy etc. The following portions occurring at pages 682 of the report illumine the position and is set out hereinbelow for the facility of quick reference :

"The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The Courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the Courts? The Courts can only interfere with an act of an executive authority If it be shown that the authority have contravened the law. It is for those who assert that the local authority have contravened the law to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed *prima facie* that responsible bodies like local authorities will exceed their powers, and the Court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the Courts in a very limited class of case. It must always be remembered that the Court is not a Court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any Court of law.

What, then, are those principles ? They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to Interference by the Court. Bad faith, dishonesty - those, of course, stand by themselves - unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable". It is true the discretion must be exercised reasonably. What does that mean ? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a

general description of the things that must not be done. For Instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. WARRINGTON, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head."

I am afraid, the petitioner has not been able to make out a case under any one of the exceptional clauses indicated by the distinguished Master of the Rolls. The contention is, therefore, rejected.

5. Learned counsel for the petitioner lastly submitted that the decision to upgrade railway Halt to a railway station has been taken for mala fide reasons the factual foundation of which has, according to him, been laid in paragraphs 9, 12 and 14 of the writ petition. He further invites my attention to the order dated 10-8-99, passed by this Court, calling upon the learned counsel for respondent No. 6 to answer to the allegations made therein against him personally. Not having been replied, in the submission of the learned counsel, it will be deemed to have been admitted on account of non-traverse. I am once again unable to accede to this contention for the reason that if the order under scrutiny has been passed in accordance with law, then allegations of mala fide lose all force. This Court is reminded of the Judgment, reported in *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, wherein the Supreme Court has observed in paragraph 19 that "... if the Tribunal held, as it should have rightly held, that the offence was established, no question of victimisation could arise. . . ." An earlier judgment of the Supreme Court, reported in (1959) 1 LLJ 450 : AIR 1959 SC 529 (*Burn & Co. v. Their Workmen*), has laid down to the same effect.

6. In the result, this writ petition is dismissed with the above observations.