

(1992) 01 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 3689 of 1990

Star Iron Works Pvt. Ltd.

APPELLANT

Vs

Eastern Railway and Others

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1992 Cal 238

Hon'ble Judges : Ajay Nath Ray, J

Bench : Single Bench

Advocate : Mr. Ajoy Gupte, for the Appellant;

Judgement

1. This is a writ application on the part of the writ petitioners in substance for preservation of their rights of exclusive user of a 12 foot wide gate. As indicated in a map in the Affidavit-in-Reply, the said gate happens to be exactly opposite a gate of the factory of the first writ petitioner.

2. The gate has been used by the same people from 1930 continuously until now and it was originally put up by the predecessor of the first writ petitioner. From 1966 the matter of exclusive user received some regular treatment in that a grant of an exclusive licence for 5 years was made in 1966 in favour of the first writ petitioner. Such grant of licence continued until the expiry of the year 1985. The licence fee at that time was Rs. 100/- per year.

3. It is the case of the respondent authority that by a letter dated 26th February, 1986, the licence of the writ petitioner was in effect decided not to be further renewed. The service of that letter upon the writ petitioners is seriously disputed on the part of the writ petitioners.

4. The writ petitioners case, on the other hand, is that in August, 1986, when they did not get the challan or a similar document for deposit of annual fee, they wrote on the 8th August, 1986 for submission of such authorisation so that they

could deposit their licence fee. It is only thereafter that they came to know from an internal office memorandum about the decision not to continue the lease allegedly taken in February, 1986.

5. Then there followed a silence of 3 years. The gate continued to be used exclusively by the writ petitioners.

6. In 1989 on the 17th April the writ petitioner again made a representation for continuation of the exclusive user of the gate. On 16th March, 1990 a letter of rejection of such prayer for continuation of the licence in respect of the gate was addressed by the respondents. It is a three line rejection without any reason or ground being apparent therein.

7. The facts of the case as made out on the two sides are, that, according to the writ petitioners there is no necessity of taking away the licence of exclusive user from the writ petitioners because there is already a 45 foot wide gate available to the general public in respect of the said siding. The writ petitioners' case is that there is in reality no necessity of taking away the 12 foot wide gate also.

8. The respondent authorities state on the other hand that they need an entry gate and exit gate. They would use the 12 foot wide gate as the exit gate. That they want to stop the exclusive licence for the purpose of ensuring an easier traffic flow.

9. The distance between the above two gates, that is, the 45 foot wide gate and 12 foot wide gate is 506 feet. It will appear so from the map annexed to the Affidavit-in-Reply about which there is no real dispute. An order was passed by this Court on 11th September, 1991 giving permission to the parties to negotiate for the purpose of opening up an exit gate in that 506 feet at the cost of the writ petitioners. That appeared to be a possible solution for easing the traffic flow as well as preservation of the long use of exclusive licence in favour of the writ petitioners for the 12 foot wide gate immediately in front of their factory.

10. Though I am told that on behalf of the writ petitioners a letter of 26th September, 1991 was written by M/s. Jhunjhunwala & Co. to the Divisional Engineer of the Eastern Railway inviting discussions, no such discussion actually took place. The matter has therefore got to be fought out on law.

11. Today's law on the matter of enforcement of constitutional rights in the contractual sphere is quite well settled. After the decision of the Supreme Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , it is no longer a complete answer to say that the parties are involved in a contract and as such constitutional remedies will not ever be open to them. When two private parties enter into a contract their rights and responsibilities are determined by the express and implied terms of the contract and the law relating to contracts. When, however, one of the parties to the contract is a public authority, it is no answer on the part of that public authority to state that its action is justifiable on the terms of the contract if such action, in spite of being is

accordance with the contract, is still so unfair, arbitrary or highhanded as to attract the protection of equality and fairness as is now afforded by Article 14 of the Constitution of India as judicially interpreted again and again.

12. In Mahabir Auto's case, a dealer's licence went off suddenly. If both the parties were private parties, the case would be a civil case as to whether the licence was terminable (or non-renewable) at will without notice on the part of the grantor. But the case was not a civil case, at any rate, not an ordinary civil case. It was a constitutional action. In that constitutional action it was said a long standing relationship which had gone on for 18 years could not simply be snapped and the licence not renewed without any apparent reasons and without taking the party into confidence. The scope for natural justice in the situation was seen and felt to be legally present.

13. In our case the situation is, to my mind very similar. A long standing relationship is being sought to be snapped without taking the writ petitioners into confidence. There is also a blockade or a deadlock somewhere, which prevents any reasonable discussion between the writ petitioners and the respondents; that is why no discussion could be held even on the basis of the order of 11th September, 1991 granting such liberty.

14. The rule for natural justice or the necessity of giving a hearing was very probably not appreciated when either the order of 26th February 1986 or the order of 16th March, 1990 was passed. But whether the legal situation was correctly appreciated by the authorities or not, the law must be applied and if the law is applied then there is no alternative to quashing both the aforesaid orders, both on the ground of violation of the rule of natural justice and on the ground of breach of Article 14 fairness as is enjoined upon all public authorities.

15. Mr. Ajoy Gupte, learned counsel appearing on behalf of the writ petitioners has also relied upon the 5 Judges' decision in the case of S.N. Mukherjee Vs. Union of India, The necessity of granting a reasoned order has been put on a very firm footing by reason of the pronouncement in that case. If rights, and a fortiori long standing rights, or even licences or long standing licences are to be taken away from parties suddenly, then it is not unfair in the common understanding of the business world that the losing party should be told why he is losing that privilege. In the constitutional language the same thing would today mean that a public authority taking away the long standing privilege should give explicit reasons for such deprivation, so that no imputation can be made against it for high handed, unreasonable or discriminatory action. It is not disputed that no reason for non-renewal was given either in the disputed letter of 26th February, 1986 or in the cryptic three line letter of 16th March, 1990.

16. If no reasons were given to the suffering party in 1986 or in 1990, the orders were bad there and then. They suffered from the breach of what is now termed as the third law of natural justice, i.e. the law for giving explicit reasons wherever a decision of some sort is taken by a public authority affecting the

rights of the citizens. If the orders were bad ab initio, giving of reasons in the affidavits cannot cure the defect that was originally present. If affidavit could so cure orders, then this anomaly would arise, that in case of two unreasoned orders with different treatment in different affidavits, one might pass the test in a Court of law because of a better drafted affidavit and another order of identical original status might not be so fortunate. That cannot be the law. Accordingly the two orders are also bad because of non disclosure of reasons, which is another way of saying that the orders are bad again, for not taking the suffering party into confidence.

17. This being a Writ Court, the question of entering into any disputed facts on the ground whether there will be any traffic jam or not does not arise; nor does the question arise before me whether the licence granted to the first writ petitioner was in reality a lease, regard being had to the nature of possession granted to the writ petitioner and the intention of the parties as revealed in the years that have long gone by, That would be a question for a Civil Court in case such a question arises.

18. For the present it must however be held that the orders of 26th February, 1986 and 16th March, 1990 being both bad, the writ petitioners' exclusive user of the gate in question has not yet been validly pronounced upon by the respondent authorities or any of them. Under those circumstances there cannot be any alternative to granting the writ petitioners liberty to pay licence fees at the rate of 100/- per year (which was the continuing rate) from the beginning of 1986 until today. Such fees shall be accepted by the respondent authorities as and when tendered.

19. About future continuation of the licence, the respondents would have to take a valid decision as to whether they would continue the relationship as was previously obtaining or take some other steps in accordance with law.

20. It was argued on the part of the respondents that the writ petition does not lie. I am afraid that the same is not good law in view of what is stated above. Reliance was placed on a judgment and order of Justice A.M. Bhattacharjee dated 31st July 1988 in the matter of A. K. Shaw, delivered in C.O. No. 9751 (W) of 1989; the said order was upheld in appeal on the 18th May, 1990. The said order merely states that where enhancement of licence fees by a public authority is challenged in a Writ, the Civil Court is a more appropriate forum than the Writ Court. The case, to my mind, has no application to the instant case where the grievances are pure constitutional grievances and cannot be entertained by any Court but a Writ Court. A Civil Court deciding upon ordinary civil rights would not be competent to strike down an action for breach, for example, of Article 14 fairness.

21. Accordingly, there will be a Writ in the nature of Certiorari quashing the orders and decision dated 26th February, 1986 and 16th March, 1990. There will be a writ in the nature of Mandamus directing the respondents, or such of them

as might be concerned in the matter, to accept licence fees from the writ petitioners for the 12 foot wide gate at the rate of Rs. 100/- per year from 1st January, 1986 until date.

22. No order as to costs.

23. All parties are to act on a signed copy of this dictated order on the usual undertaking.

24. Order accordingly.