

(2011) 09 SC CK 0039

In the Supreme Court Of India

Case No : Civil Appeal No. 7658 of 2011 (Arising out of SLP (C) No. 24685 of 2010)

Union of India (UOI) and Others

APPELLANT

Vs

J.D. Suryavanshi

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2011 SC 3605 : (2011) 3 JKJ 28 : (2011) 10 SCALE 689 : (2011) 13 SCC 167 : (2011) 11 SCR 158 : (2011) 6 UJ 3661

Hon'ble Judges : R.V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Indira Jaisingh, ASG, Abhinav Mukerji and Samridhi Sinha, for the Appellant;

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—Leave granted.

2. The Respondent, a practicing lawyer, filed a public interest litigation in the year 2009 in the Madhya Pradesh High Court (Gwalior Bench) praying for issue of the following directions to the Railway administration (Western Railway, West Central Railway and North Central Railway):

- (i) the additional berths from Three Tier Sleeper & AC Class Coaches in all trains;
- (ii) to complete the second track between Gwalior and Indore; and submit a progress report to court in respect of the work done in the last 25 years;
- (iii) to reschedule the train timings of Bhind - Indore Intercity Express (Train No. 9319/9320) and Gwalior-Indore Express (Train No. 1125/1126) taking into account various factors and not to stop the train at Parihar and Laxmibai Nagar;
- (iv) to fill all vacant posts of coolies in all stations to avoid discomfort to passengers;

(v) to introduce additional 3 tier sleeper coaches in all trains between Gwalior and Indore;

(vi) to introduce additional coaches (AC-I & AC-III) in Dehradun Express, additional coaches (AC I and AC-II tier) in Bhind-Indore Intercity Express and Gwalior-Indore Expresses (Train No. 9319, 9320, 1125 & 1126);

(vii) to extend train route of Ujjain-Dehradun Express (Train No. 4309 and 4310) upto Indore;

(viii) to re-schedule the timings of Intercity Express and Dehradun Express to enable more passengers can use them and;

(ix) to extend the route of Shuttle Express (Gwalior-Guna-Gwalior) and Indore-Maksi-Indore upto Indore and Gwalior respectively during day time.

3. The High Court passed a series of interim orders in the said case, in compliance of which, Railways made changes in the timings of several trains. They also added AC-II coaches, AC-I coaches, composite (AC-III cum AC-II) coaches to several trains. In some cases, the Railway Administration informed the court that the demand for further trains/coaches will not be feasible or could not be met, either due to technical reasons or lack of full capacity utilization in regard to existing trains/coaches. They also pointed out that certain seasonal increase in passenger traffic like summer vacations, cannot be a ground for permanent or throughout the year addition of new trains or addition of new coaches.

4. But the High Court was not satisfied. It got into details of railway administration and train schedule management, which were totally alien to judicial review, and beyond judicially manageable standards. We extract below a typical interim order passed on 17.12.2009:

It is reported to us that the Intercity Express though has some berths to accommodate the passengers who propose to travel in II AC but the bogie is made in two parts half of it is reserved for II AC while the other half is being utilized by the passengers traveling in III AC.

Learned Counsel for the Respondents pray for time to seek instructions in the matter.

Let the General Manager (Traffic), Railways file his personal affidavit in the matter as to why such a bogie has been provided and what problem would be faced by the Railway Administration if instead of half bogie II AC a full bogie II AC is provided.

5. By the impugned interim order dated 5.7.2010, the High Court directed the Railways to provide a Full AC-II coach in the Intercity Express. The High Court further directed the Railways to consider and introduce AC-I coach in the Intercity Express. While issuing the said direction the High Court observed: "Needless to say the Benches of this prestigious High Court are smoothly

functioning at both the cities viz. Gwalior and Indore" thereby implying that the AC-I coach was necessary in the Intercity Express because the High Court has Benches at Gwalior and Indore. The High Court also directed the impleadment of Army Regiments and Border Security Forces to the PIL. It further directed the learned Counsel for the Union of India to submit in writing how many officers of Central Government, Armed Forces and Border Security Forces are required to travel from Gwalior to Indore and back. For alleged disobedience of one of the interim orders, a contempt petition (No. 178/2009) was also filed against the Railway which appears to be pending.

6. Feeling aggrieved the Railways have filed this petition contending as follows:

(i) High Court has no jurisdiction to direct either the addition or deletion of coaches on any particular train, or to direct the change of frequencies or timings of a particular train.

(ii) Any directions for providing additional coaches where the trains were already running with its normal load of 15 coaches would causes several technical problems, coach shortages in other trains, complications, safety violations etc.

(iii) The High Court was not justified in directing the Railways to attach a full AC-II tier & AC-I, coaches in the Gwalior Indore Express 1125/1126.

7. A three Judge Bench of this Court in 2002 (6) ALT 38 (SC) dealing with similar directions regarding Railways by the said High Court, had set aside a decision of the High Court directing the central government to reschedule the timings of the Awantika Super Fast Express. This Court held:

After we heard the matter, we are of the view that such a direction could not have been issued by the High Court to the Appellants herein in a petition under Article 226 of the Constitution. What would be the scheduled timings for a train for its departure and arrival is an administrative decision keeping in view the larger public interest or public convenience and not the convenience of the public of a particular town. Such a decision is within the exclusive administrative domain of the Railways and is not liable to be interfered with in a petition filed under Article 226 of the Constitution.

(Emphasis supplied)

In spite of the said decision rendered in regard to the similar earlier orders of the said High Court, the Division Bench of the High Court has chosen to indulge in a similar exercise in this case.

8. Railway administration is a specialized field. It has to cater to the needs of the entire country. It has limited resources and limited number of railway engines and railway coaches, particularly AC coaches, more particularly AC-I class coaches. Railway will have to distribute and utilize the available resources and the available Rolling Stock equitably, uniformly, and appropriately to serve all the sections of the country. It is possible that in a particular section there may be

hardship, inconveniences and need for introduction of more trains, better timings, and better facilities. But one sector is not India. We shudder to think what would happen if every High Court starts giving directions to the Railway to provide additional trains, additional coaches and change timings wherever they feel that there is a shortage of trains or need for better timings. Even in the State of Madhya Pradesh, we are sure that apart from Gwalior-Indore sector, there are other sectors which may be facing similar hardships and problems. The Railway does not exist to cater to a particular sector. It is for the Railway administration to decide where, how and when trains or coaches should be added or the timings should be changed. The Courts do not have data inputs, specialized knowledge or the technical skills required for running the Railways. The High Court cannot interfere in regard to only one sector without having any material or information about the requirements of other sectors available infrastructure, existing demands and constraints, safety requirements etc. Nor can the High Court direct introduction of trains or additional coaches of a particular category or direct change in timings of a train. Changing the timing of a train is not a simple process, but requires coordinated efforts, as it would affect the timings of other trains. There are also different types of trains - express trains, superfast trains, passenger trains, goods trains, with different speeds and priorities. Any attempt to pick and choose one train or one sector for improving the functioning will lead to chaos involving technical snags and safety problems.

9. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, this Court held:

Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

(Emphasis supplied)

In *Federation of Railway Officers Association and Others Vs. Union of India (UOI)*, this Court was considering a challenge to the government's proposal to form new railway zones. The Appellant therein placed some material to demonstrate that formation of new railway zones may not increase the efficiency of railway administration. This Court refused to interfere and observes:

Even otherwise, to meet the demands of backward areas cannot by itself be inconsistent with efficiency. When the Railways is a public utility service, it has to take care of all areas including backward areas. In doing so, providing service, efficient supervision and keeping the equipment and other material in good and

workable condition are all important factors.... Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same? The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same.

In Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, this Court held:

The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

The following observations of House of Lords setting the limits of judicial review in Chief Constable of the North Wales Police v. Evans 1982 (2) All ER 141, can be usefully referred:

The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court.

Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made..... Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

This Court has repeatedly warned that courts should resist the temptation to usurp the power of the Executive by entering into arenas which are exclusively within the domain of the executive.

10. How many coaches should be attached, what types of coaches are to be attached, on which lines what trains should run, what should be their timings and frequency, are all matters to be decided by the Railway administration using

technical inputs, depending upon financial, administrative, social and other considerations. This Court has repeatedly held that courts should not interfere in matters of policy or in the day-to-day functioning of any departments of governments or statutory bodies. Even within the executive, the need for separation of roles has been voiced. We may usefully refer to the following observation in the Rakesh Mohan Committee Report (1998) made in a different context:

With regard to institutional separation of roles, into policy, regulatory and management functions, these roles are currently blurred, which causes confusion about the underlying vision and mission of Indian Railway. The institutional separation of roles will mean that policy makers are limited to setting policy; regulators fix competition rules in general and pricing in particular; management manages and is measured against clear performance indicators.

11. The record of the case shows that Railway had made all efforts to comply with the requirements/earlier directions of the High Court. Courtesies extended by Railways should not be taken as readiness to comply with impractical suggestions and unreasonable directions. The malaise of interference in the functioning of Railway administration is a matter of concern. Courts, bureaucracy and political leaders should give up the tendency to compel or pressurize the Railway administration to cater to only parts of the country particularly to the State or area to which they belong. Any such attempt to promote only regional interests would affect the national interest. The Railways should have the freedom and independence to grow, develop, improve and serve the nation. Be that as it may.

12. In view of the above, the appeal is allowed and the impugned interim order dated 5.7.2010 of the High Court is set aside. In the light of what is stated above, we request the High Court to dispose of the writ petition itself without any further directions of similar nature.