

(2009) 12 SC CK 0080

In the Supreme Court Of India

Case No : Civil Appeal No's. 4578, 4579 and 4580 of 2006

Union of India (UOI)

APPELLANT

Vs

Shankar Lal Soni and Another

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2010) 6 AWC 5545 : (2010) 4 JT 70 : (2010) 3 SCALE 774 : (2010) 1 SCC 563

Hon'ble Judges : J. M. Panchal, J;H. S. Bedi, J

Bench : Division Bench

Advocate : P.H. Parekh, S. Wasim A. Qadri, A.K. Sharma, Harish Chandra, Savitri Pandey, Ron Bastian, Ashok Bhan, Subhash Kaushik, S.N. Terdol, Anil Katiyar, B. Krishna Prasad, K.S. Prasad, Chanchal Kumar Ganguli, U.A. Rana, Sakesh Kumar, Rameshwar Prasad Goyal, Shakun Sharma, Rukhmani, Parul Negi, Sameer Parekh and P.V. Yogeswaran, for the Appellant;

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—This judgment will dispose of the three appeals before us. The facts relating to these appeals are as under:

2.1 On 15th October, 2004, one Mr. C.K. Garg, a Senior Advocate in Jaipur wrote a letter to Hon'ble Mr. Justice S.K. Keshote, a Judge of the Jaipur Bench of the Rajasthan High Court complaining that though senior citizens were entitled to Airlines tickets on concession, certain conditions had been imposed thereon in fact nullified the concessions. The two conditions that were complained of by Mr. Garg were:

(i) that the Airlines required that a senior citizen applying for a concessional ticket had to do so 7 days in advance of the journey; and

(ii) that the senior citizen was required to stay a minimum of 2 days at the outgoing destination in order to be eligible for the return ticket.

It appears that this matter was taken up as a Public Interest Litigation by a Division Bench of the High Court and notice was issued to the Airlines i.e. Jet Airways and the Indian Airlines, to the Union of India and to the Indian Railways though no relief had been claimed against the last two. On issuance of notice several replies were filed by the respondents controverting the pleas made by the petitioner and also justifying the imposition of the conditions. It was pointed out that the conditions were justified on account of the administrative and financial constraints which went with the concessions and as a concession could not be claimed as a matter of right, it was open to the respondents to impose any condition on the concession so granted. We have been told during the course of arguments that some of the conditions which had been complained of have in fact been removed subsequently and the present exercise is largely academic insofar as Jet Airways is concerned inasmuch that the direction for the tickets being booked seven days in advance has since been withdrawn. The Division Bench by its judgment dated 9th May, 2005, which has been impugned in the present set of appeals, issued certain directions to Jet Airways, Indian Airlines and the Indian Railways with regard to the concessions and extended the scope of the Public Interest Litigation yet further on the basis of a news item published in the 'Dainik Bhaskar' a local Hindi daily newspaper on 2nd March, 2005, reporting the death of four children who had been run over by a speeding train and, accordingly, issued certain directions pertaining to railway safety as well. The Division Bench found that the condition of 7 days prior purchase and the condition of a stay two nights at the outgoing destination was, in its considered opinion, unreasonable. Consequently, the Airlines were directed to give concessions to senior citizens without insisting on the twin conditions of purchasing tickets 7 days in advance and calling upon them to stay at least two nights at the outgoing destination.

2.2 The question of the Railways was then taken up and it was directed that the conditions placed by the Railways with regard to the purchase of concessional tickets at the Railway ticketing window at the railway station alone and restrictions on a change of the class of ticket or extension of journey etc. were again unjustified and it was directed as under:

We are of the opinion that Railway should extend the benefit of concession to a senior citizen on changing class of journey, extension of journey etc. irrespective of the fact whether the transaction occurs at railway reservation counter or at the railway ticketing window at railway station or in a train during journey.

2.3 As already indicated, certain directions were also given with regard to making life safer for those who lived alongside the railway track on the basis of the news item published in the 'Dainik Bhaskar'.

3. At the very outset, Mr. P.H. Parekh, the learned senior counsel representing the newly added respondent - the Consumer Education and Research Society has pointed out that the Railway safety matter was already pending before another Bench of this Court in Writ Petition No. 162 of 2001 filed under Article 32 of the

Constitution of India in the case of Consumer Education & Research Centre v. Union of India and Anr. We are, therefore, of the opinion that the directions issued by the Division Bench in the impugned judgment with regard to the safety measures to be taken by the Railways should be left for decision by the other Bench. We are thus left with the question of concessions alone.

4. Mr. S. Wasim A. Qadri, the learned Counsel representing the Union of India in C.A. No. 4578 of 2006, Mr. U.A. Rana, representing the Jet Airways and Mr. K.S. Prasad representing the Indian Airlines in C.A. No. 4580/2006 have argued on behalf of the appellants whereas Mr. Shankarlal Soni, respondent-in-person in C.A. 4578/2006 and Dr. Manish Singhvi representing Mr. C.K. Garg, the contesting respondent No. 1 in C.A. No. 4580 of 2006, have argued on behalf of the respondents. We have also heard Mr. P.H. Parekh, the learned senior counsel representing the Consumer Education and Research Society.

5. It has been pointed out by the learned Counsel for the appellants that the judgment of the High Court proceeded on a completely fallacious basis as a concession given to senior citizens was with certain conditions and it was not for the court to interfere and decide as to what was more appropriate with regard to these matters. It has also been pointed out that policy matters were matters of administrative law and best left to the administration and could not be a cause for interference by the court unless they could be said to be totally arbitrary or violative of some Statute or Law and as the concessions given were on the basis of the guidelines issued by the Airlines, there was absolutely no justification for the Court's interference in the matter.

6. The learned Counsel have also relied upon Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others, , BALCO Employees Union (Regd.) Vs. Union of India and Others, to support their submissions.

7. Mr. Shankar Lal Soni, appearing in person has raised several preliminary submissions challenging the very competence of the appeal inasmuch that the Union of India was not authorised to file an appeal on behalf of the Indian Railways; that the High Court had not been impleaded as a party and that the grounds of the SLP were vague as the prayer clause did not indicate as to the relief claimed from this Court. He has also pointed out that though directions had been issued against the Rajasthan State Road Transport Corporation, the Corporation had not filed a SLP which effectively meant that it had accepted the judgment of the High Court. He has submitted (as held by this Court) in Udai Chand Vs. Shankar Lal and Others, and Taherakhatoon (D) by Lrs. Vs. Salambin Mohammad, , that it was open to this Court to even revoke the leave granted in a case where no cause for the grant of leave had been made out.

8. Dr. Singhvi, the learned Counsel for the respondents has also urged that it was rather unfair that a concession granted with one hand was being taken away by the other and that a duty lay on all citizens of this country to ensure a comfortable, happy and healthy life to its senior citizens and any condition laid

down by the appellants had to stand the test of reasonableness and in this view of the matter there was no error in the order of the High Court. Mr. Parekh has further pointed out that subsequent to the judgment of the High Court the Airlines as well as the Railways had waived some of the conditions which had been challenged by the writ petitioner respondents and the matter was, therefore, largely academic at this stage.

9. We have heard the learned Counsel for the parties at very great length and gone through the record that their assistance. It cannot for a moment be doubted that a concession granted by a carrier be it the Railways or the Airlines or the Road Transport Corporation is a concession only and no person is entitled to insist that the concession should be with conditions determined by that person. It has not been disputed before us that it would be open to the authorities to withdraw the concessions altogether and in some cases, we are told such, as in the case of Jet Airways, the concessions given to the senior citizens have been modified. Once it is held that no beneficiary of a concession has a right to insist on a particular condition or conditions, the very basis for the judgment of the High Court disappears. We have quoted from the operative portions of the High Court judgment and find that no reasons have been given as to why the Court found that some of the conditions imposed were not justified. It appears that the courts proceeded only on the basis of its subjective satisfaction to arrive at the conclusion that the conditions were not to the benefit of senior citizens ignoring the basic nature of a concession given on the basis of administrative policy and ignoring the effect that they could have on the concessionaires.

10. Mr. Prasad has referred us to the reply filed by the Indian Airlines before the High Court pointing to the financial impact of the grant of concessions to senior citizens for the years 2001 to 2003-2004. The facts are indeed revealing:

YEAR

FINANCIAL IMPACT (Rs. In Crores)

2000-2001

37.97

2001-2002

39.38

2002-2003

43.07

2003-2004

25.39

The figures pertaining to other Airlines have not been provided but we can safely

assume that they too would result in substantial loss to them as well. We have also gone through the judgments cited by the learned Counsel. The basic issue that has been decided in these cases is that it is not for the Court, be it the High Court or the Supreme Court, to interfere in matters of policy as that is a decision for the administrators on an examination of the various facets before them and the inputs they receive from various sources. In *Ram Singh Vijay Pal Singh and Ors. (supra)* this Court quoted with approval from the judgment in *Netai Bag and Others Vs. The State of West Bengal and Others*, in the following words:

12. In *Netai Bag and Others Vs. The State of West Bengal and Others*, this Court held as under in para 20 of the Reports: (SCC p. 275)

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or mala fide. In the matter of different modes, under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them could be resorted to.

11. The Court also relied on the judgment of this Court in *BALCO Employees Union's case* and observed:

In the well-known case of *BALCO Employees Union (Regd.) Vs. Union of India and Others*, a three-Judge Bench summarised the law on the point as under: (SCC p.335c-f)

In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court. It is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to 'trial and

error' as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy the appropriate forum is Parliament and not the courts.

and finally concluded:

16. The writ petitioners have absolutely no legal right to claim that the shops, godowns or sheds be transferred to them on hire-purchase basis. In these circumstances the relief claimed by them cannot at all be granted and the writ petition was rightly dismissed.

12. The very basis of this judgment is that a decision to grant a certain concession or a certain benefit and the conditions for their grant are a matter for the administrators alone and the court should not interfere in the matter on the premise that it was of the opinion that some of the conditions imposed were not justified. A concession based on an administrative decision de hors a statute as in this case stands on a yet weaker footing.

13. Mr. Shankar Lal Soni has emphasised that the SLP at the instance of the Union of India was not maintainable. We find absolutely no merit in this plea for the simple reason that as a party before the High Court it was open to the Union of India to file a SLP in the matter. Likewise, we find absolutely no justification as to why the leave which has already been granted by this Court should be revoked as we are of the opinion that the impugned judgment was palpably unjustified and erroneous. Mr. Soni has not seriously come to the merits of the case and has raised technical pleas which, in the case of a Public Interest Litigation, initiated by the court on the basis of a newspaper report, are untenable. He not been able to point out any material circumstance which could justify the maintenance of the impugned judgment.

14. As already indicated above, Dr. Singhvi has emphasised on the duty cast on all of us to ensure a comfortable and happy life to senior citizens. There can be no doubt as to this obligation but in such matters emotion and passion cannot form the basis for decision. As already noted at the very beginning, certain directions had been issued by the Division Bench of the High Court in the impugned judgment with regard to the safety measures that should be taken by the Railway Administration. In the light of the fact that this matter is already before another Bench, we make no comment and leave it for decision of that Bench. Insofar the present appeals are concerned, the judgment of the High Court is completely unsustainable. We, accordingly, allow the appeals, set aside the judgments of the High Court and dismiss the writ petitions.

15. There will, however, be no order as to costs.