
(2007) 09 MP CK 0086
In the Madhya Pradesh High Court

Vijay Kumar Agrawal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : AIR 2008 MP 89 : (2008) 1 MPLJ 498

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Petitioner is a handicapped person who "was allotted a P. C. O. Centre, (reserved for handicapped persons) by the Additional Commercial Manager Central Railway, Bhopal. An agreement was duly executed between the petitioner and respondents which is marked as annexure P/2. The Railway Administration asked the TDN BSNL, Itarsi to make arrangement of two telephone lines and one additional line (for facts) on the STD/PCO booth allotted to the petitioner vide its letter dated 8-1-2003 contained in Annexure P/3.

A complaint was received on 16-8-2004 against the petitioner that excess money was charged by him. Though the petitioner submitted his explanation but ultimately deposited an amount of Rs. 200/- vide Annexure P/5 which was imposed upon him as fine. Another complaint was again submitted against the petitioner which was duly replied vide Annexure P/6, however, the reply was not found to be satisfactory and ultimately a fine of Rs. 500/- was imposed upon the petitioner which was deposited by him vide Annexure P/7. Likewise the petitioner again deposited Rs. 500/-, which was deposited by the petitioner under protest after submitting the reply as contained in Annexure P/8.

On 18-6-2004, an inspection was made by the then General Manager of Western Central Railways wherein it was found that the rate list was not displayed at the

booth. Fine of Rs. 500/- was further imposed which, too, was deposited by the petitioner vide Annexure P/10. After another explanation on 25-6-2004 by the Vigilance Inspector, it was found that two STD and one local phone was in user and the receipt was issued only on demand. Therefore, again a fine of Rs. 500/- was imposed vide Annexure P/11.

A show cause notice as contained in Annexure P/12 was issued to the petitioner accusing him of five irregularities and the petitioner was asked as to why the licence may not be cancelled. In the reply contained in Annexure P/13 it is stated that no complaint was made in the preceding six months which shows improvement on the part of the petitioner, further that the petitioner is a handicapped person with no other earning member in the family consisting of his widow mother, brothers and sisters. Thereafter, the respondent No. 4 vide impugned order dated 11-8-2006 contained in Annexure P/14 directed for the closure of the petitioner's booth on account of the decision of the Railway administration. A prayer for quashment of Annexure P/14 has been made in the present writ petition on the ground that the petitioner has not committed breach of any of the terms and conditions of the agreement and that the impugned order is violative of Article 14 of the Constitution of India.

In the return, it was admitted that the petitioner on account of being handicapped person was allotted the subject STD/PCO Booth. Petitioner committed breach on various occasions and was penalized from time to time with fine. Petitioner admitted his mistake and deposited the fine imposed on him on various occasions. Petitioner has committed breach of agreement and accordingly, the STD/PCO allotted to him has been rightly cancelled.

Shri Ahluwalia, learned Counsel for the petitioner made the following submissions:

- (i) Petitioner was not required to display the rate list, moreover, rates/pulse rate of STD for different cities are different which are given in directory issued by the telephone Company and it was always available on the booth. In view of number of places, it is not practically possible to display the rate list.
- (ii) The impugned order is passed in violation of principles of natural justice inasmuch as no reasonable opportunity to defend was granted to the petitioner.
- (iii) Petitioner having already deposited the amount of fine, the impugned order amounts to double jeopardy which is prohibited under Article 21 of the Constitution of India. The impugned order is, therefore, not liable to be sustained.
- (iv) Respondents have taken into consideration the extraneous material which was not communicated to the petitioner.

Shri N. S. Ruprah, counsel for the petitioner contended that the petitioner has committed breach of terms and conditions of the allotment and has further deposited the fine as acknowledgment of violation. In this view of the matter, petitioner cannot be permitted to agitate that he had not committed any breach

of contract. Thus, termination of the petitioner's contract is sustainable in law. Petitioner has been provided adequate opportunities of hearing and there is substantial compliance of principle of natural justice. Accordingly, the writ petition is liable to be dismissed.

I have heard the learned Counsel for the parties at length which has been considered in succeeding paragraphs.

Shri N. S. Ruprah, learned Counsel for the respondents raised a preliminary objection that the agreement contained in Annexure P/2 contains an arbitration clause. Referring to Clause 27, it is contended that the writ petition having been preferred without availing the arbitration is not maintainable.

Clause 11 of Annexure P/2 empowers the respondents to cancel the licence on breach of any of the terms and conditions, misuse of licence or misconduct on the part of the licensee. Involvement of the licensee in criminal case afforded a ground for cancellation of licence. In Clause 11, it is mentioned that the licence may be cancelled after issuing a proper notice and such cancellation would be final and binding on the parties.

Clause 27, which provides for arbitration, is to the effect that all the disputes, questions and differences arising out of agreement or relating thereto, would be sent to sole arbitration of the person to be appointed by the Chief Commercial Manager, Central Railway.

Since it is clearly stipulated in Clause 11 that the cancellation of the licence will be final and binding on the parties, it cannot be said that the arbitration clause provides an alternative efficacious remedy. Cancellation of the licence vide Clause 11 has not been made final and binding subject to arbitration clause. On the contrary, arbitration clause seems to have been excluded to the extent of cancellation of licence. This being so, prayer for dismissal of writ petition in the light of arbitration clause is not acceptable.

Clause 21 of Annexure P/2 makes it obligatory on the part of the petitioner to display the rate list on some conspicuous place of the booth. Petitioner has not admittedly displayed any such list. His explanation is that the rates/pulse rates vary according to the distance and for different places it is in the nature of directory and it is not possible to display the same in booth. Petitioner was served with a notice regarding the said default. It was virtually accepted by the petitioner by depositing the fine of Rs. 500/- imposed upon him vide Annexure P/10. Similarly, it may be seen that the excess money was charged by the petitioner on various occasions and he was penalized for the same after due notice. The fine was duly deposited by him and it is now not open for the petitioner to contend that the fine was wrongly imposed or there was no occasion to impose the fine.

Government of India through its Ministry of Railway issued a circular dated 22nd April, 2004 along with enclosed policy of allotment of booth which is contained in

Annexure R/J. Clause 10 empowers the respondents to terminate the contract after issuing due notice. This clause is reproduced below for convenience:

The Administration (i.e. Divisional Railway Manager or General Manager) will have the right to impose fine/terminate the licence if the licensee is not conforming to the conditions laid down by the Railways and if there are complaints against him/her for overcharging, etc. The contract will be terminated after issuing due notice. The termination of the licence may be done on the basis of the defaults committed by the licensee and at least 3 chances may be afforded by imposing fine. The compounding of defaults may be empowered to Divisional Railway Manager with the powers of imposing fine not less than Rs. 500/- after due observance of the principles of Natural Justice.

Termination of licence is provided for after at least giving 3 chances by imposing fine. A notice was issued to the petitioner as contained in Annexure P/12. In the reply dated 11-5-2006, it was not disputed that the fine was imposed on petitioner for more than 5 times as revealed in show cause notice. Again, in his letter dated 26-9-2006 contained in Annexure R/2, the petitioner admitted the irregularities on his part. It is true that the petitioner being a handicapped person deserves a little lenient approach. However, in the present case it is revealed in Annexure P/12 that the petitioner was making over charge and was realizing excess money. Although he was made aware of the complaints received by the Department against him yet he did not make effort to pacify the customers and instead preferred to pay the penalty every time. Petitioner thus, did not receive any lesson from the fine imposed on him from time to time on five occasions. It seems now the petitioner is trying to make capital of his handicapness for quashing the order of cancellation of his licence without making any improvement in his business attitude. Since more than 3 opportunities have already been afforded to the petitioner by imposition of fine and petitioner has not corrected himself but has again misconducted with the customers by realizing excess money and preferred to deposit fine of Rs. 500/- vide Annexure P/13 on 6th occasion, licence of the petitioner is found to have been cancelled in due manner in accordance with Clause 1 of Annexure R/1 which is not found to be based on any extraneous material.

Shri Ahluwalia, learned Counsel for the petitioner strongly contended that the fine having been imposed, the occurrence leading to imposition of fine cannot be made basis for termination of licence as same would amount to double jeopardy.

1 This submission is highly misconceived. As per the Black's Law Dictionary, 6th Edition, plea of double jeopardy protects against second prosecution for same offence after acquittal or conviction and against multiple punishments for same offence. The evil sought to be avoided is double trial and double conviction, not necessarily double punishment.

Terms and conditions of the contract are contained in agreement marked as Annexure R/2. The petitioner was required to realize the charges at prescribed

rates. He had no right to recover excess charges from the customers. This having been done, the petitioner has committed breach of conditions of the contract. Further, the petitioner was also found to have not displayed the rate list in contravention of Clause 21, of Annexure P/2. Thus, fine was imposed on the petitioner for sixth time as revealed in Annexures P/12 and P/13 and same was deposited every time by the petitioner. There was power with the respondents to terminate the licence after affording three chances by imposing fine. This, too, was observed. Thereafter, a notice was duly served as contained in Annexure P/12 and thus, after affording opportunity, the licence was terminated in exercise of powers under Clause 10. This termination is not a fine or penalty for the same offence but is a consequence of repeated breach or misconduct on the part of the petitioner which does not amount to double jeopardy.

I am fortified by the Apex Court decision rendered in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , where it has been held that "when an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct."

Provisions empowering imposition of fine and termination of licence are altogether different and empowerments for the purpose of fine and termination of contract are with different objects and purposes. Fine is imposed to give opportunity for improvement whereas termination is directed for bringing an ultimate end to the matter. Both clauses operate in different spheres. Termination clause cannot become operative before imposition of fine at least for three times. It is the petitioner only who invited termination despite three chances having been afforded to him by imposing fine. He continued to flout the terms and conditions of the agreement and made himself liable to termination of the contract. Thus, termination is not penalty for the breach he had committed but is obviously a necessary consequence of repeated breach/misconduct on his part. In this view of the matter, the objection of the petitioner that the impugned order amounts to double jeopardy is not acceptable.

In the result, the writ petition being devoid of substance is hereby dismissed, however, with, order as to costs.