Nanik Awatrai Chainani

Vs

The Union of India

Criminal Appeal No. 51 of 1970

(A. N. Ray, I. D. Dua JJ)

20.07.1970

JUDGMENT

DUA, J. -

1. In this appeal by special leave the appellant who has appeared in person challenged the order of a learned single Judge of the Gujarat High Court (Shelat, J.), dismissing in limine criminal revision against the order of the Sessions Judge, dated October 4, 1969, dismissing the appellant's revision from the order of the Judicial Magistrate, Kalol, dated August 30, 1969, granting the application of the railway administration under Section 138 of the Indian Railways Act and directing the P.S.I. Railway at Sabarmati who is also the P.S.I. Railways at Kalol to secure possession of the stalls in question from the appellant to the railway administration or to the person appointed by the administration in that behalf.

2. The appellant had, on February 9, 1964, entered into an agreement with the railway administration by means of which he was allotted a Tea Table (hereafter described as Tea Stall) at Kalol railway station. This agreement came into force from May 18, 1964, and subject to the provisions for earlier termination was to remain in force for three years. By a similar agreement, dated February 20, 1955, the appellant was allotted a Refreshment Stall at the same railway station for a period of three years subject to the provision for earlier termination similar to the first agreement. In both the agreements the appellant was described as the licensee. Under these agreements the terms of which are identical the appellant was to run the two stalls in accordance with the directions of the railway administration. In addition to other terms for earlier termination, the agreements were also terminable under Clause 52 by one month's notice on either side without assigning any reason. On July 11, 1965, the two stalls were inspected by the Commercial Inspector and the Station Master and it was found that the appellant had committed irregularities and was not running them in accordance with the directions of the railway administration. A fine of Rs. 100 was imposed on him in terms of the agreement, the fine being payable within one week under Clause 33(a). The amount of fine having not been paid within the stipulated period a notice was given to the appellant on September 16, 1965, for vacating the railway premises by October 30, 1965. The appellant having failed to vacate the premises, the agreement were terminated with effect from November, 1965.

3. As the possession of the Tea and Refreshment Stalls was not delivered by the appellant to the railway administration, the latter applied to the Judicial Magistrate, Kalol under Section 138 of the Indian Railways Act for securing possession of the aforesaid premises. Before the Magistrate it was not disputed that since the appellant had to work under the supervision and according to the directions of the railway administration he was a railway servant. This, according to the learned

Magistrate, was not denied by the appellant even in his written statement; on the other hand it was claimed that the position of the appellant was at par with that of the railway servants. The appellant contested the application principally on the ground that the contracts of the Tea and Refreshment Stalls had been entered into with the appellant with the object of rehabilitating him as a displaced person from Pakistan and that, therefore, those contracts could not be terminated. After a lengthy discussion on the points raised the learned Magistrate expressed his final conclusion in these words :

> "The opponent is proved to be railway servant. Also it is proved that his service has been lawfully discharged. Mr. Thakursingh, the learned advocate for the opponent has contended that the applicant has terminated the agreement without any justification and without assigning any reason. But that is not required to be done by either party to the agreement. It is argued by Mr. Thakursingh that the opponent is prepared to pay arrears of licence fees to the tune of Rs. 4,000/- or so and he is prepared to pay the same to the railway. But that is not a good ground to disallow the application. Section 138 of the Railway Act provides for summary remedy for delivery to Railway Administration of property detained by a railway servant. The opponent who is proved to be a discharged railway servant refuses to deliver the stall and the place on which he is permitted to place a tea table though served with notice. Hence he is liable to be summarily evicted. He has prolonged the matter for unreasonably long period under different excuses. His services are terminated and so he has occupied the stall and the place for table unauthorisedly ..."

Reliance for holding the appellant to be a railway servant was placed on S. L. Puri v. Emperor (AIR 1937 Lah 547).

4. The appellant took the matter in revision to the court of the Sessions Judge. There the appellant denied that he was a railway servant and urged as an alternative submission that even if he was a railway servant he had not been validly discharged. In any event, so proceeded his contention, no notice to deliver possession of the Stall having been given to him before filing the application under Section 138, he could not be dispossessed through the court. The Sessions Judge did not agree with these submissions and held that termination of the contract amounted to the appellant's discharge and, therefore, proceedings could lawfully be initiated against him under section 138 of the Indian Railway Act for summary delivery of property, in his possession or custody, to the railway administration. The appellant was held to have become a railway servant by virtue of Sections 3(7) and 148(2) of the Indian Railways Act. The Sessions Judge relied for his view both on S. L. Puri's case (supra) and R. L. Majumdar v. Alfred Ernest. (AIR 1959 Cal 64) A revision to the High Court, as noticed earlier, was dismissed in limine.

5. On appeal in this Court the principle pointed urged by the appellant is that by reason of being a railway servant he was automatically entitled as a matter of law to the protection afforded to Government servants by Article 311 of the Constitution. This submission is wholly misconceived. Article 311 is in the following terms :

> "(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
>
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank

except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on the criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President of the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

6. A plain reading of this Article would show that the appellant cannot claim its benefit. The appellant is neither a member of the civil service as contemplated by this Article nor has he been dismissed, removed or reduced in rank so as to attract the protection of sub-article (2) of this Article. The appellant's rights are clearly confined to the written agreements and if he feels aggrieved by anything done by the railway administration which he considers to be in breach of the terms of the agreements, he is at full liberty to seek redress in accordance with law in the ordinary Civil Courts. In other words, if he considers that his agreements have been wrongfully terminated then he can challenge such termination in the Civil Courts and claim whatever relief is available to him under the law.

7. So far as impugned order of the High Court and the order of the Sessions Judge is concerned we are unable to find any legal infirmity which would justify interference by this Court under Article 136 of the Constitution. The relationship of master and servant is characterised by agreement of service, express or implied, and whether or not a given agreement is one of service is a question of fact depending on its terms considered as a whole. Indeed, it is not the appellant's case before us that he was not a railway servant. On the contrary, the main plank of his challenge is that as a railway servant he is entitled to claim the protection of Article 311 of the Constitution. This submission, as already observed by us, is clearly based on a misunderstanding of the scope and effect of that Article.

8. The appellant's next submission that the two agreements mentioned above clothed him with an independent vested right to do his business of running the two stalls in question, which right is heritable and not open to termination is equally misconceived and unacceptable. The express terms of the agreements exclude the heritable character of the appellant's right. The only right which the appellant could claim is a contractual right of a bare licensee and that right is subject to the terms contained in his agreements. He cannot claim any right outside or beyond those agreements. The

terms which govern the parties expressly reserve to the railway administration extensive power of directing and regulating the appellant's work and also, to an extent, of controlling the manner of doing the work. Keeping in view the purpose and object of these agreements, namely, that of affording necessary amenities to the travelling public, retention of this overall power by the railway administration is not only appropriate but necessary. The retention of this power by the railway administration, in our view, constitutes relevant material for sustaining the conclusion of the Courts below that the appellant is a railway servant, as defined in Section 3(7), read with Section 148(2), India Railways Act, against whom action can be taken under Section 138 of the said Act. This conclusion is in accord with the view expressed in the decisions of the Lahore and Calcutta High Courts to which reference has been made earlier. We do not find any cogent ground for disagreeing with that view which seems to have prevailed all these years. May be that the appellant was allotted two stalls under the agreements with the object of rehabilitating him as a displaced person. But that consideration cannot over-ride the terms of the agreements and absolve him of his obligations thereunder and permit him to avoid the consequences of the alleged breaches of agreements on his part. In this appeal we are not concerned with the question of violation of the terms of his agreements by the appellant nor can we consider the legality of the termination of his agreements. For that grievance the appellant has to seek relief elsewhere by a different process.

9. It may, in this connection, be pointed out that the appellant had also approached the Gujarat High Court by certiorari challenging the order of fine imposed on him, relying on the objection that the imposition of the fine was in violation of Article 311 of the Constitution. This writ petition was rejected on August 25, 1969. In the special leave application, the appellant has averred that the Judicial Magistrate passed the order under Section 138 of the Indian Railways Act on August 30, 1969 - Only five days after the order of the High Court dismissing his writ petition - and it is contended that the impugned order must for that reason be held to have been inspired by malice against the appellant. We do not find any warrant for this assumption.

10. The appellant had also filed several miscellaneous applications in this Court which were dismissed by us after hearing him. He wanted to summon some witnesses and also some documents for proving that the allotment of the stalls had been made to him for the purpose of rehabilitating him as a displaced person. We did not consider it necessary to take evidence in this Court on that point. The written agreements, in our view, conclude the matter. The appellant also sought adjournment of this appeal on the ground that he wanted to engage a senior counsel to argue his appeal, but that counsel could only appear after the summer vacation. We did not consider that to be a sufficiently cogent ground for adjourning the appeal, the hearing of which was expedited on April 13, 1970. The appellant, also applied for referring this case to the Constitution Bench because, according to him, the question raised was of great constitutional importance. We did not find any cogent ground for acceding to this prayer.

11. The appellant has, in his arguments, laid repeated stress on the submission that the impugned action of the railway administration would deprive him and his family of the only source of livelihood. That consideration has little relevance because this appeal has to be decided on the merits on the existing record in accordance with law. That indeed is a matter between the appellant and the railway administration. His request for allotment, we have no doubt, will be considered on its merits in accordance with the law and the relevant departmental practice. It is not for us in these proceedings to express any opinion on the merits of his claim.

12. This appeal fails and is dismissed.

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