

Union of India and Another

Vs

B. N. Prasad

Criminal Appeal No. 93 of 1972

(Syed M. Fazal Ali, Jaswamt Singh JJ)

09.12.1977

JUDGMENT

FAZAL ALI, J. -

This appeal by special leave is directed against the judgment of the Patna High Court dated November 29, 1971 by which the High Court has quashed an order of the magistrate directing the respondent to be evicted from the railway premises. The appeal arises in the following circumstances :

1A. The respondent was a contractor employed by the railway for supplying food in the refreshment room at Kishanganj station. The last agreement signed with the contractor is dated July 10, 1967, which expired on July 10, 1970. Thereafter, a notice was given by the railway administration to the respondent for vacating the premises, and as he failed to do so, a complaint under Section 138 of the Indian Railways Act was filed by the Deputy Chief Commercial Superintendent, N.E. Railway to the sub-divisional magistrate for passing an order in terms of Section 138 of the Railways Act. The magistrate accepted the application and directed the eviction of the respondent.

2. The respondent thereupon filed a writ petition in the High Court, mainly on the ground that Section 138 could not be invoked as the complaint was not made by an authorized person. It was alleged in the petition before the High Court that the complaint made by the Deputy Chief Commercial Superintendent, was not maintainable, as it should have been filed by the Chief Commercial Superintendent, according to the provisions of the Railways Act. This plea appears to have found favour with the High Court which allowed the writ petition and quashed the order of eviction.

3. Appearing in support of the appeal, Mr. U. R. Lalit submitted a short point before us. He argued that Section 138 does not require that the complainant should be specifically authorized by the Railways in order to make a complaint maintainable. All that Section 138 requires is that the application should be filed on behalf of the railway administration. There can be no doubt that the appellant was a high officer of the railway administration and, therefore, in a position to file an application for eviction on behalf of the railway administration. Section 138 runs thus :

If a railway servant is discharged or suspended from his office or dies, absconds absents himself, and he or his wife or widow, or any of his family representatives, refuses or neglects, after notice in writing for that purpose to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in

the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Presidency Magistrate or Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers, or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

4. In our opinion, a close perusal of this section clearly reveals that the provision has widest amplitude and takes within its fold not only a railway servant but even a contractor who is engaged for performing services to the railway, and the termination of his contract by the Railway amounts to his discharge, as mentioned in Section 138. As the provision is in public interest meant to avoid inconvenience and expense for the travelling public and gear up the efficiency of the railway administration, it must be construed liberally, broadly and meaningfully, so as to advance the object sought to be achieved by the Railway Act. Furthermore, the section only requires that an application should be made by or on behalf of the railway administration. The section does not require that any particular person holding a particular post, should be authorized to file a complaint. The matter was considered by this Court in *Nanik Awatrai Chainani v. Union of India* ((1971) 1 SCR 650 : (1970) 2 SCC 321 : 1970 SCC (Cri) 447), where this Court pointed out, while relying on decisions of the Lahore and Calcutta High Courts that the appellant in the case was a railway servant, and an order of eviction would be passed against him. This Court relied on the definition of the railway servant as contained in Section 3(7) read with Section 148(2) of the Act. The Court approved of the decision in *S. L. Kapoor v. Emperor* (AIR 1937 Lah 547 : 38 Cr LJ 793) and *R. L. Mazumdar v. Alfred Ernest* (AIR 1959 Cal 64 : 1959 Cri LJ 37), which had taken the view that even a contractor is a railway servant within the meaning of Section 138. In this connection, this Court observed : (SCC p. 324 para 8)

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 over-all 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 materials 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), Indian Railways Act, against whom action can be taken under Section 138 of the said Act.

This Court went to the extent of holding that such a servant in view of the precarious contract under which he had entered in the Railway service was not governed by Article 311. In the case of *S. L. Kapoor v. Emperor* (supra), the following observations were made :

The termination of his service by the railway under Clause 21 of the agreement amounts to his discharge within the meaning of Section 138 of the Act and he is therefore liable to dispossession of the premises which he was occupying as a servant of the railway.

5. As already indicated, this case was approved by this Court in the decision mentioned above. In this view of the matter, it is manifest that the High Court has taken an erroneous view of law in throwing out the complaint filed by the Deputy Chief Commercial Superintendent on the ground that he was not authorized to file the complaint. Even on the other question whether or not the respondent was a railway servant, as pointed out, the matter is no longer *res integra* and is

concluded by the decision of this Court referred to above. For these reasons, the appeal is allowed, the judgment of the High Court is set aside and that of the sub-divisional magistrate is restored.

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