

Dr. P. Nalla Thampy Thera

Vs

Union of India and Others

Writ Petition No. 8911 of 1981

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

28.10.1983

JUDGMENT

RANGANATH MISRA, J. -

1. The petitioner in this petition under Article 32 of the Constitution is a resident of Sultanbatterly area in the State of Kerala and describing himself as a commuter of the Indian Railways he has alleged violation of fundamental rights guaranteed under Articles 19 and 21 and claims reliefs of mandamus to the Union of India for implementing the reports of the Kunzru, Wanchoo and Sikri Committees, appointing a fact finding Commission to inquire and report about the numerous train accidents from 1970 onwards and for several other directions to the Union Government and the instrumentalities connected with the administration of the Railways. As the petition which the petitioner, an allopathic doctor by profession, had himself drafted and filed was unduly long and repetitive, written submission with the assistance of counsel crystallising the issues for determination by the Court was filed, leave to amend the writ petition was granted and notice thereon was issued on August 2, 1982. The petitioner alleged, inter alia, that the Railways in this country are owned by the Central Government and on account of failure to fulfill the constitutional, statutory and commercial obligations by the Railways, adequate safety protection to the passengers and their properties is not available. The Indian Railways Act, 1890 ('Act' for short) has prescribed several safety measures; based upon experience, the Railway Board through which apex body the administration is run and controlled has also prescribed rules and issued instructions which are not being properly implemented. The Union Government had appointed three high powered Committees in the post-independence period, namely, the Kunzru, Wanchoo and Sikri Committees to investigate into the affairs of the Railways with particular reference to accidents and though detailed and useful recommendations have been made by these Committees, there has been no adequate implementation thereof. Particular reference has been made to the unmanned level crossings, increasing human error as a contributing factor to accidents, non-allocation of adequate funds for improvements, improper utilisation of the assets and facilities, inefficiency in the administration at different levels, prevalence and increase of indiscipline, frequency of thefts, robberies and murders of passengers, ineffective checking and supervisory system, want of replacement of equipment and repairs to bridges as also non-provision of adequate facilities to passengers.

2. The Joint Director (Safety) has filed a counter-affidavit in answer to the Rule on behalf of the respondents. It has been averred that the recommendations of the Accidents Enquiry Committees were examined and implemented within the limits of financial and material resources. So far as manned level crossings are concerned there were as many as 14,471 of them as on March 1, 1982; unmanned level crossings were provided mostly on roads where the volume of road and train traffic

was low. It has been further pleaded that periodic review is undertaken about manning of unmanned level crossings and opening of new level crossings in consultation with appropriate State Governments. Initially it used to be the obligation of the respective State Governments to provide for such level crossings at their cost in view of the accepted position that at a level crossing the right of way is of the train in preference to the traffic on the road. As that arrangement was not working well, with effect from April 1, 1966, a Railway Safety Works Fund has been set up and expenses are being met out of it. From 1978 potentially hazardous unmanned level crossings with a volume of traffic of more than 6000 train vehicle units or poor approach visibility are being manned in a phased manner at the cost of the Railways and control at the gate is also being improved. As on June 1, 1982, there were as many as 27,233 unmanned level crossings on the Railways and if all of them are to be manned, a capital expenditure of 330 crore rupees would be necessary and similarly an annual recurring expenditure of Rs. 44 crores will have to be met. As a measure of safety, whistle boards have been fixed near unmanned level crossings requiring the engine driver to whistle while approaching such level crossings. Most of the States have framed rules under the Motor Vehicles Act, 1939, making it obligatory for drivers of motor vehicles to stop short of unmanned level crossings, observe and then proceed. Speed breakers are usually provided on the road approaches to all unmanned level crossings. With a view to educating the users of the roads wide publicity is given through newspapers, cinema slides, commercial broadcasting and the television about the hazards involved while negotiating unmanned level crossings. It has been alleged that unmanned level crossings are gradually being replaced by manned ones and improved technical gadgets are being provided for efficient operation. Relying on the Sikri Committee Report of 1978, it has been submitted that the State Governments appeared to be aware of their responsibilities in this matter and about two-thirds of the funds of the Safety Works had been utilised by March 31, 1982. While admitting that in the initial period utilisation of funds was poor and finalisation of schemes for overbridges and underbridges was slow, the situation is claimed to have improved and in 1982-83 as many as 15 works in different States involving an expenditure of Rs. 22 crores have been cleared.

3. Dealing with manpower, the counter-affidavit asserts that direct recruits are given proper training required for the respective posts and only qualified people are entrusted with assignments. Pragmatic and scientific classification of various posts has been made and suitable care is being taken in this regard. So far as the locomotive drivers are concerned, strict vision standards have been laid down and general physical fitness is a prescribed pre-requisite. Drivers are subjected to periodical medical examination until the age of 45 at intervals of three years and thereafter until superannuation every year.

4. Every accident, it has been averred, is thoroughly enquired into to fix the responsibility for it and to visit the delinquent with proper punishment. Ordinarily such enquiries are conducted by the administrative machinery. Accidents involving loss of human life and properties estimated over one lakh are earmarked for enquiry by Commissioners of Railway Safety who as authorities appointed under Section 4 of the Act function independently of the Railway Administration and are under the administrative control of the Ministry of Civil Aviation. Enquiries by the Railway officials are stipulated to commence within three days of the accident and are intended to be over within one week of their commencement, while enquiries by Commissioners of Railway Safety are also required to start within three days and official reports are required to be made within 60 days of the accident. Adequate disciplinary control is exercised and on the findings of the enquiries, the delinquent officials are visited with necessary punishment.

5. Adverting to robberies and dacoities in the running trains, it has been pointed out that they are problems of law and order, maintenance of which is an obligation of the State Governments.

Government Railway Police, Civil Police and plain clothed CID officers operate for the purpose of reducing crime and for detection. A moiety share of the cost of GRP is borne by the Railway Administration. Added to this the Railway Protection Force is maintained to protect consignments booked for transport as also Railway property. The overall strength of the GRP stands at 6740. They escort passenger trains running at night by deploying armed guards, provide beat patrolling at stations and waiting halls, keep surveillance over criminals and post pickets at vulnerable points.

6. With reference to improvements in the rolling stock and required gadgets, it has been stated that the Sixth Plan for the Railways has been termed as 'Rehabilitation Plan'. Overaged gadgets are intended to be withdrawn subject to availability of resources and manufacturing capacity within the country. The Planning Commission which is an expert body is responsible for fixing of the priorities. It has again been pleaded that there are nearly 1,20,000 bridges on the Railways out of which 195 are important bridges and nearly 9400 are major bridges. It is said that every bridge is annually inspected and continuous record is maintained in regard to every bridge in the bridge register. On an average 400 to 600 bridges are annually built. Speed restriction is imposed on old and weak bridges and at present there are 202 such bridges. Figures of six years between 1977 and 1983 of the outlay on bridges have been provided which indicate substantial sums having been set apart for the rebuilding of bridges. It is said that the total life of 80 years for steel work and 100 years for masonry part of the bridges stipulated in the Railway Code is for the purpose of provision in the Depreciation Reserve Fund. The codal life does not have any direct relevance with the condition of the bridge and there is no necessity of rebuilding a bridge when its codal life is over. There has been no instance where the work of bridge rebuilding has been postponed for lack of funds and no accident has occurred owing to structural failure of any bridge or girders.

7. Colour light signalling which is an improved device less dependent on direct visibility and where signal is pre-warned by a signal in the rear, is being provided on the truck and main routes on a graduated scale. Automatic warning system has been introduced in Gaya, Mughalsarai and Howrah-Burdwan chord line sections on the Eastern Railway. Due to theft of aluminium track magnets the system has been found not very satisfactory. Experiments are being made for evolving a design which would not be prone to theft.

8. The petitioner has filed a rejoinder pointing out that the counter-affidavit clearly indicated a negative approach on the part of the respondents to the entire matter. According to the petitioner assistance of 500 crores of rupees was to come during the year ending March 31, 1983 and from out of such funds, pressing improvements like manning the unmanned level crossings could be undertaken. Reliance has been placed on the observations of Sikri Committee that accidents at unmanned level crossings take a heavy toll of human lives every year. The petitioner has pleaded for abolition of overtime employment of safety category staff. He has pointed out that though he asked for directions for providing appropriate monitoring of speed of trains particularly at accident prone spots in the track, no reply has been given thereto in the counter-affidavit. The strength of the GRP has been said to be totally inadequate keeping in view the size of the Railways and volume of the passenger traffic it handles. The petitioner has denied the assertion in the counter-affidavit that no accident has taken place on account of defective bridges and has pointed out that the accident of June 6, 1981 on a river bridge in the Bihar State was attributable to this factor only. The petitioner has pleaded again for the introduction of the automatic warning system and has referred to a publication of the Directorate of Safety, Railway Board, entitled, "A Review of Accidents on Indian Railways 1979-80", where the introduction of automatic warning system has been suggested to be introduced to avoid accidents. He has also pleaded for enhancing the minimum compensation in the event of loss of life of a passenger arising out of accidents to a sum of Rs. 75,000 by appropriate

amendment of Section 82-A(2) of the Act. The petitioner has found fault with the counter-affidavit for being silent in regard to his plea for the appointment of Railway Inspectors to make periodical inspection of carriages, engines, tracks, etc.

9. The lis before us is not of the ordinary type where there are two contending parties, a claim is raised by one and denied by the other, issues are struck, evidence is led and the findings follow. Though the petitioner is a commuter of trains run by the Indian Railways, the writ petition is essentially in the nature of public interest litigation and the petitioner has attempted to voice the grievances of the community availing the services of the Indian Railways. In view of the recent pronouncements of this Court no objection has been raised in the counter-affidavit and we have not been called upon to adjudge the locus standi of the petitioner to maintain an action like this.

10. Railways came to India in 1853 and the first track to be laid was of a small length connecting the then city of Bombay with a suburb. Through the decades that followed the expansion was usually for considerations of trade and commerce, troop movement and administrative convenience. More of expansion came gradually connecting almost the entire country through a well woven network of Railways and by the time the country became independent most of the Railways had been nationalised and Railways constituted the most important commercial activity of the Government of India. As early as 1850 - and three years before the opening of the first railway track, Lord Dalhousie, the then Governor General of India had said in his minutes :

I trust they (the East India Company and the Government of India) will ever avoid the error of viewing Railways as private undertakings and will regard them as national works, over which the Government may justly exercise and is called upon to exercise stringent and salutary control. This control should not be an arbitrary right of interference but a regulated authority defined and declared by law which is not to be needlessly or vexatiously exacted but which, in my humble judgment, is necessary at once for the interests of the State and for the protection of the public. (Minutes of Lord Dalhousie, July 4, 1850.)

11. This regard for the public interest during the pre-independence period was often subjected to the limitations imposed by the British Capital and Management and by British commercial and economic interests until the Railways were nationalised between 1925 and 1944. At any rate, by 1947 when the foreign domination ended, the Railways had emerged as the main viable and stable means of transport and were providing the lifeline and link throughout the length and breadth of the country. By 1955 the total length of all Indian Railways was 34,705 miles and the capital suck was more than 900 crore rupees.

12. The rise in the importance of the Railways in the national sphere has been gradual. With the expansion of the Railways a high powered body known as the Railway Board has come to be placed at the apex of control and with the new set up following independence a Minister remained incharge to administer the affairs of the Railways through the Board. As early as 1924 by a resolution known as the Convention Resolution of the Legislative Assembly the Railway budget has been separated from the general budget and this historical practice has been continued till today.

13. Today the Railways provide the most effective means of transport both for passengers as also for the goods traffic. The Railways have a great impact in holding this great country together and in promoting and running its economy. Their contribution to the community is manifold - some seen and others not apparently visible. Briefly stated, it is a big force, the largest employed in the country

and a monopoly transport agency.

14. Before we come to deal with the specific aspects raised in the writ petition and countered by the respondents certain general observations need be made, The Indian Railways are a socialised public utility undertaking. There is at present a general agreement among writers of repute that the price policy of such a public corporation should neither make a loss nor a profit after meeting all capital charges and this is expressed by covering all costs or breaking even; and secondly, the price it charges for the services should correspond to relative costs. Keeping the history of the growth of the Railways and their functioning in view, the commendable view to accept may be that the rates and fares should cover the total cost of service which would be equal to operational expenses, interest on investment, depreciation and payment of public obligations, if any. We need not, however, express any opinion about it.

15. After independence, keeping to the ideologies that had been nurtured during the period of struggle an attempt has been made for the simplification of the classes in the Railways. Instead of first class, second class, inter class and third class, two classes only have been maintained, namely, the first class and the second class besides the air-conditioned class. In developed countries usually the classification is higher and lower; sleeping or sitting and the like. In India 90 per cent of the earnings in respect of passenger traffic come from the lower class commuters.

16. Also after independence expansion projects have been under-taken and many areas which have hitherto remained unlinked and unconnected have been joined up as part of the national lifeline. Pandit Jawahar Lal Nehru, first Prime Minister of India had once said :

Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural level.... Every thing that comes in the way will have to be removed; gently if possible, forcibly, if necessary. And there seems to be little doubt that coercion will often be necessary.

17. This approach on principle does not appear to have been abandoned, It is proper that this is worked out also in the Railways and, as quickly as possible, classification conforming to this is introduced. It is manifest that the Indian Constitution has definitely rejected the authoritarian form of Government and directed the State to bring about an egalitarian social order through the rule of law. In keeping with this mandate several guiding policies are being indicated but implementation is not being made. What Tolstoy remarked can relevantly be quoted as apt :

The abolition of slavery has gone on for a very long time. Rome abolished slavery; America abolished it and we did, but only the words were abolished, not the thing.

18. The implementing machinery has become non-functional. This is so not only in our country. Wilfred Jenks in his address in April 1972 to the International Law Organisation had summed up the position thus :

Throughout the world there is an acute crisis of confidence in integrity and fairness. This crisis of confidence lies at the heart of political instability, economic disorder, industrial disturbance, racial and religious conflict, cultural anarchy, youth unrest and continuous international tension. Disruptive in all these fields, it paralyses action to remove its causes.

Burger, C.J. of the United States has said :

We are approaching the status of an imperfect society where capability of maintaining elementary security in the streets, in the schools and for the homes of our people is in doubt. At every stage of the criminal process, the system cries out for change.

19. What has been extracted above appropriately summarises the current situation all the world over. No purpose is served by placing the blame at the doors of the Government of the day. We must have realism and candour. Independence has been secured at great cost and sacrifice. It is our obligation to maintain it and create an environment in which its fruits can be harvested and shared.

20. Freedom brings responsibility. There can be no rights without responsibilities. In our country, unfortunately individual rights seem to have received disproportionate emphasis without proper stress on corresponding social obligations and responsibilities. In a welfare State like ours the citizen is for ever encountering public officials at various levels, regulators and dispensers of social services and managers of State operated enterprises. It is of the utmost importance that the encounters are as just and as free from arbitrariness as are the familiar encounters of the rights.

21. Edmund Burke spoke thus :

All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and they are to account for their conduct, in that trust to the one great master, author and founder of society.

Equally apt are the observations of Lord Denning in his address to the National Conference of the Law Society in 1980 :

When you look upon these scientific achievements, then look back for a moment on our world today, what do you see, crime, increasing everywhere; sins, disgraceful sins, corroding corruption, increasing everywhere. When we see this, surely we recall the words of 2000 years ago - 'what doth it profit a man if he gains the whole world and loses his own soul !'

What is, therefore, of paramount importance is that every citizen must get involved in the determined March to resurrect the society and subordinate his will and passion to the primordial necessity of order in social life.

22. Abraham Lincoln once told his Congress :

This country, with its institutions, belongs to the people who inhabit it.

Such also is the position in our country. Everyone in the country must realise this and be told the great truth said by Lord Wright :

The safeguard of British liberty is in the good sense of the people [Liversidge v. Anderson, 1942 AC 206].

It is useful to conclude our general observations by quoting from Robert Ingersoll :

A Government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities and all

the nations that have passed away - all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen crumbling stone of the once mighty Rome, comes a wail - as it were - the cry that no nation founded on injustice can permanently stand.

23. Having thus cleared the way by indicating the approach, ordinarily the powers of the Court to deal with a matter such as this which prima facie appears to be wholly within the domain of the Executive, should have been examined. Lord Simond in *Shaw v. Director of Public Prosecution* [(1961) 2 All ER 446, 452] has observed :

... I entertain no doubt that there remains in the Courts of Law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the State, and that it is their duty to guard it against attacks which may be the more insidious because they are novel and unprepared for.

Mathew, J. in *Murlidhar Aggarwal v. State of U.P.* [(1974) 2 SCC 472, 482 : AIR 1974 SC 1924], indicated : [SCC p. 482, paras 31, 32]

Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

If it is variable, if it depends on the welfare of the community at any given time, how are the courts to ascertain it ? The Judges are more to be trusted as interpreters of the law than as expounders of public policy. However, there is no alternative under our system but to vest this power with Judges. The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze.

The learned Judge then quoted with approval the famous statement of Cardozo (*The Nature of Judicial Process*) : [SCC p. 483, para 32]

... No doubt, there is no assurance that Judges will interpret the mores of their day more wisely and truly than other men. But this is beside the point. The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere.

24. The petitioner has grounded his petition on Articles 19 and 21 of the Constitution. Article 19, inter alia, guarantees freedom of movement throughout the territory of India and to practise any profession, to carry on any occupation, trade or business, and Article 21 guarantees that no person shall be deprived of his life and personal liberty except according to procedure prescribed by law. The petitioner has maintained that he, nay every citizen of this country for the matter of that, is entitled to demand that the State shall provide adequate facilities and create and maintain an environment in which the right to move freely and carry on any business or profession would both be practicable and feasible. Since the State maintains the Railways which provide the link and make working out of both these rights possible, it is contended, such facilities should be in good shape, adequate, prompt, efficient, economic and within the reach of the common man, free from danger or

apprehension of life. Similarly, this service must operate efficiently for transport of goods to facilitate business and practise of profession and trade by citizens. There is hardly any scope to doubt that the guarantees provided in Part III of the Constitution are fundamental and it is the paramount obligation of the State to ensure availability of situations, circumstances and environments in which every citizen can effectively exercise and enjoy those rights. The right to life has recently been held by this Court to connote not merely animal existence but to have a much wider meaning - to include the finer graces of human civilization. If these rights to the citizens are to be ensured, it is undoubtedly the obligation of the Union of India and its instrumentalities to improve the established means of communication in this country. Here again, however, we need not express any opinion as we do not propose to give any directions to the opposite parties. No dispute regarding maintainability having been raised, that question also did not arise for consideration.

25. We have said earlier that the Railways are a public utility service run on monopoly basis. Since it is a public utility, there is no justification to run it merely as a commercial venture with a view to making profits. We do not know - at any rate it does not fall for consideration here - if a monopoly based public utility should every be a commercial venture geared to support the general revenue of the State but there is not an iota of hesitation in us to say that the common man's mode of transport closely connected with the free play of his fundamental right should not be. We agree that the Union Government should be free to collect the entire operational cost which would include the interest on the capital outlay out of the national exchequer. Small marginal profits cannot be ruled out. The massive operation will require a margin of adjustment and, therefore, marginal profits should be admissible.

26. It is of paramount importance that the services should be prompt, efficient and dignified. The quality of the service should improve. Travel comforts should be ensured. Facilities in running trains should be ensured. Quality of accommodation and availability thereof should be ensured. The administration should remain always alive to the position that every bona fide passenger is a guest of the service. Ticketless travelling has to be totally wiped out. We are of the view that it is this class of passengers which is a menace to the system. Without any payment these law breakers disturb the administration and genuine passengers. Stringent laws should be made and strictly enforced to free the Railways from this deep rooted evil. Security both to the travelling public as also to the non-travelling citizens must be provided and this means that accidents have to be avoided, attack on the persons of the passengers and preying on their property has to stop. Scientific improvements made in other countries and suitable to the system in our country must be briskly adopted. The obligations cast by the Railways Act and the Rules under it must be complied with. It is relevant to point out here that in the counter-affidavit the respondents have denied some of the assertions of the petitioner, yet no dispute has been generally raised to the stand taken in the writ petition. We are alive to the fact that Government have limitations, both of resources and capacity, yet we hope that the Government and the Administration would rise to the necessity of the occasion and take it as a challenge to improve this great public utility in an effective way and with an adequate sense of urgency. If necessary, it shall set up a high powered body to quickly handle the many faced problems standing in the way. Giving directions in a matter like this where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very much in issue, is not prudent and we do not, therefore, propose to issue directions. We, however, do hope and believe that early steps shall be taken to implement in a phased manner the improvements referred to in the counter-affidavit and in our decision.

27. We think it proper to conclude our decision by remembering the famous saying of Henry Peter Broughan with certain adaptations :

It was the boast of Augustus that he found Rome of bricks and left it of marble. But how noble will be the boast of the citizens of free India of today when they shall have it to say that they found law dear and left it cheaper; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of innocence.

it is only in a country of that order that the common man will have his voice heard.

28. The dream can become a reality if every citizen becomes aware of his duty and before asking for enforcement of his right, volunteers to perform his obligation.

29. And before we part, we must record our appreciation of the performance of the petitioner. He has taken great pains to highlight his stand - collected a lot of relevant material and argued his case quite well - a doctor by profession though. As this was a public interest litigation, we direct that he shall be entitled to consolidated costs of Rs. 5000 recoverable from the Railway Ministry of the Union Government unless paid within two months hence.

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