

Bhushan Krishna Vs. the Union of India (Uoi) and ors.

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Court : Patna

Decided On : Apr-22-1999

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 9617 of 1998

Appellant : Bhushan Krishna

Respondent : The Union of India (Uoi) and ors.

Disposition : Petition Dismissed

Prior history : Radha Mohan Prasad, J. 1. With consent of the parties, the matter has been heard for final disposal at this stage. 2. In the writ petition, prayer is to quash the order dated 27.8.98, terminating the appointment of the petitioner as Contractor of Railey English Halts contained in Annexure-4, issued for Divisional Railway Manager, Danapur (Respondent No. 3). 3. In short, the relevant facts are that in response to the advertisement for appointment of Contractor for sale of tickets at Kilometres 4

Judgement :

Radha Mohan Prasad, J.

1. With consent of the parties, the matter has been heard for final disposal at this stage.

2. In the writ petition, prayer is to quash the order dated 27.8.98, terminating the appointment of the petitioner as Contractor of Railey English Halts contained in Annexure-4, issued for Divisional Railway Manager, Danapur (Respondent No. 3).

3. In short, the relevant facts are that in response to the advertisement for appointment of Contractor for sale of tickets at Kilometres 474-475 at Railey English Halt proposed to be opened between Pandarak and Barh stations of Danapur Division. Petitioner submitted his application on 30th May, 1997 and after accepting his candidature, he was informed on behalf of Respondent No. 3 vide Annexure-2 dated 7.4.98 requiring him to deposit Rs. 500/- as security money for the proposed Halt Contractor with the Divisional Cashier, Eastern Railway, Danapur immediately and produce money receipt in the office of Respondent No. 3 for execution of the agreement. It is claimed by the petitioner that on 19.5.98, he deposited the said security money vide receipt, petitioner received the impugned order of cancellation on the pretext that he had indulged in two criminal cases--one bearing Criminal Case No. 52/95 at Pandarak Police Station and Case No. 273/92 at Barh Police Station. Accordingly, it was stated that the Railway administration deserve the right to terminate the appointment of Halt Contractor. Thus, the appointment letter dated 7.4.98 stands cancelled. According to the petitioner, he is not accused in either of the two said cases. In one case his father although under some enmity has been made accused and the other has been filed against unknown which has been finalized. Accordingly, the petitioner gave legal notice to Respondent No. 3 on 11.9.98, but on getting no response, he filed the present writ petition.

4. It is contended that before terminating the contract of the petitioner, no notice had been served upon him nor any show cause was asked from him completely denying opportunity to defend himself, and thus, the impugned action is violative of the principles of natural justice. It is further contended that in any view of the matter a person is liable for his own act and not for the others and hence to punish a person for the deeds of another is illegal & malafide.

5. A counter-affidavit has been filed on behalf of the Respondents in which it is not disputed that the petitioner was selected and appointed as Contractor, and that he

also deposited the security money, but it is contended that he never submitted money receipt as per the aforementioned letter dated 7.4.98 (Annexure-2), whereby he was directed to immediately produce the money receipt to the office of the Railway Divisional Manager. Learned Counsel for the respondents submitted that the petitioner vide Annexure-2 was required to deposit the aforementioned amount immediately and produce money receipt in the office for execution of agreement, yet the deposit were made after about one and half months vide Annexure-3 and receipt was never produced in the office of respondent No. 3 for execution of agreement. However, in the meanwhile complaint was received in which it was pointed that the petitioner was involved in criminal activities and his family members were involved in certain criminal case. It was also pointed out that the petitioner was not a local person of the area where the said halt was to be opened. On thorough examination, the proposed appointment of the petitioner was cancelled. According to the respondents, the petitioner failed to execute the agreement with the Railway for a very long period nor he submitted money receipt as her letter dated 7.4.98. It is further submitted that in the advertisement, it was clearly mentioned that the applicant must fulfil the following conditions:

(i) The applicant must be at least a matriculate. (ii) The applicant must be local resident of the area where the halt is being opened, (in) The age of the applicant must be between 21 years and 55 years (iv) The applicant must bear a good health and should produce a health certificate from a registered Medical Practitioner alongwith the applicant to the extent that, he is fit for the active service and is free from any communicable disease. (v) The applicant must be of sound financial condition and shall produce a certificate issued by a competent authority.

6. On thorough inquiry by the C.T.I., it was found that the petitioner was not residing within the locality for more than 10 years and he by way of suppressing material facts got the letter of selection. C.T.I., submitted their reports indicating therein that neither the petitioner was local resident nor he was having good character. According to C.T.I. Pandarak Police has also reported that the petitioner's antecedent was not fair and his family members were F.I.R. named accused. According to the learned Counsel for the respondents, the petitioner has got, no legal right to challenge the order, as no agreement was executed and

particularly on account of furnishing of false information in his application for selection as Contractor. It is further stated in the counter-affidavit that after the order cancelling the Selection of the petitioner another advertisement was published inviting applications to which the petitioner never raised any objection and now at this stage when new Contractor has already been selected and a deposit of the security money has also been made by him, he is not at liberty to challenge his termination.

7. An application for intervention has also been filed on behalf of the newly-selected candidate, namely, Subansh Kumar to be added as party-respondent and opposed the writ petition. In the said application, it is stated that it was known to the petitioner that intervener-respondent has already applied for his appointment as Contractor of Railey English Halt, and that he was selected and thereafter also deposited Rs. 500/- as security money it is, thus, submitted on behalf of Intervener-respondent that the writ petition is fit to be dismissed on the sole ground that the said facts were suppressed and the present Intervener-Respondent has not been made party. According to the learned Counsel for the Intervenor-respondent after the appointment of the Intervener-respondent nothing remained for adjudication in favour of the petitioner and as such the writ petition is fit to be rejected since it has become infructuous. This fact, though has been answered in paragraph 3 of the reply affidavit, but the same has not been denied. It is simply stated that subsequent action taken after service of the legal notice and filing of the present writ petition has got no meaning at all. However, despite this, petitioner has not challenged the validity of the order of settlement made in favour of the intervener-Respondent, by filing any amendment application. As such, the writ petition is fit to be dismissed on this ground alone. Moreover, in reply affidavit filed on behalf of the petitioner, a dispute has been raised about non-production of the receipt in the office of the concerned authority. According to the petitioner, the same was produced immediately after deposit were made on 19.5.98. In support of which the petitioner has not produced any evidence. Under such circumstances also, it is difficult to hold that the petitioner fully complied the requirements made in the appointment letter, contained in Annexure-2. It may be true that the petitioner himself may not be accused in the criminal case and that before making such allegation in the impugned order he was not given opportunity to defend but the

fact remains that he admittedly did not comply with the requirement, contained in Annexure-4, whereby he was directed to deposit the security money immediately and produce the money receipt in the office of Respondent No. 3 for execution of agreement. The above requirement contained in the letter, contained in Annexure-2 was issued on 7.4.98 whereas the deposit was made after five weeks on 19.5.98 vide Annexure-3 and he has not produced any evidence in support of this claim that he produced the money receipt in the office of Respondent No. 3. In reply it is simply alleged that after deposit of money, he; several times contacted the concern authority but the agreement was not executed due to laches on the part of the respondent-authority. In support of which also, no evidence has been produced. The matter got delayed on account of non-compliance of the formalities by the petitioner. As such, this Court does not feel inclined to interfere with the impugned order. Moreover, there being dispute on facts, it is not a fit case for exercise of discretionary jurisdiction under Article 226 of the Constitution particularly in the absence of concluded contract.

8. The writ petition is, thus, dismissed but without costs.

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