

Sai Chandra Traders and anr. Vs. Union of India (Uoi) and anr.

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Court : Allahabad

Decided On : Aug-22-1975

Reported in : AIR1976All230

Judge : Hari Sarup, J.

Acts : Railways Act, 1890 - Sections 3(4) and 27

Appeal No. : Civil Misc. Writ Petn. No. 2613 of 1974

Appellant : Sai Chandra Traders and anr.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Standing Counsel, ;B.N. Sapru, ;D. Sanyal and ;B.D. Madhyan, Advs.

Advocate for Pet/Ap. : Markandey Katju, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Hari Sarup, J.

1. This petition has been filed for quashing the orders of the Divisional Superintendent, Central Railway and for issue of a writ in the nature of mandamus

to direct the respondents to make available the wagons to the petitioners for loading stone ballast at the rail siding at Shankergarh.

2. The case of the petitioners, in brief, is that they had taken a stone quarry on lease for supplying ballast to the State Government. They wanted to load the ballast at the Railway siding in dispute at Shankergarh and for that purpose required the Railway Administration to make available the wagons at that place. The Railway Administration made available the wagons on some occasions but then refused to make them available at the siding. According to the petitioner this action of the Railway Administration is contrary to law.

3. The case of the Railway Administration, on the other hand, is that the siding in dispute is not a public railway siding but is a private siding for the use of the Railway Administration only, and was not requisitionable by members of the public, and that the railway public siding is at a reasonable distance from this siding and the petitioner can load goods, if it liked from that siding. The petitioner contends that there is no road connecting that railway siding and the site of the quarry.

4. The question or issue, therefore, that arises for decision of the pleadings of the parties is: whether siding in dispute is a private siding of the railway administration meant for its exclusive use, or it is a public siding open for use by the members of the public? The evidence led by the petitioner in this connection is of the character of user. The petitioner had alleged that he had utilised this siding for loading the wagons on some occasions with permission and on other occasions without specific permission. The other evidence is on the basis of the information received by the petitioner from some other persons including one Radhey Shyam Misra to the effect that they had also been loading their ballast in Railway wagons at this siding. There is also an averment that this process of occasional loading without specific permission had been going on for quite a number of years. The evidence of the respondents is to the effect that on occasions permission had been granted to some persons including the petitioner to load the wagons at this siding but that was only by way of special concession and it did not create any right in favour either of the petitioner or any other member of the public. The respondent has also

denied the allegation that the siding had been used for number of years by the members of the public without permission. It is urged that whenever the Railway Administration made available the wagon at the disputed siding, it was on the basis of an implied permission to use the siding; it did not mean user by right.

5. There is no doubt that the user of a siding by some members of the public either under specific permission or under implied permission of the Railway Administration cannot change the character of the Railway siding. If it is a siding which is meant exclusively for the Rail-way Administration then the grant of permission by Railway Administration to the members of public may be either irregular or in the nature of a licence not sufficient to create any rights against the Railway Administration, Even the evidence led by the petitioner, except about his own conduct which is sworn on the basis of personal knowledge, Ss of the character of hearsay evidence; much reliance cannot be placed on such evidence. The evidence is not at all sufficient to prove that the user of the siding by the consignors was as of right, in every case there had to be a special request for making available the wagon at this siding and the acceptance of the request, in the absence of anything else, would amount to an implied permission. The evidence is not of such a character as might go to prove the existence of a right. Even if It be accepted that some persons have at times, during the course of years, loaded wagons at this siding without express permission of the Railway Administration, the same, in my opinion, will not be sufficient to convert this siding into a public siding if it was not a public siding but was a siding meant for the exclusive use by the Railway Administration.

6. Learned counsel for the petitioner has also placed reliance on Section 27 of the Indian Railways Act which runs as under:--

27 (1) -- 'Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by It and for the return of rolling-stock.'

It is contended that the Railway Administration is bound to afford all reasonable facility to the petitioner on the present siding as it is within its power to do so. But

before Section 27 (1) can apply it has to be shown that the siding in question is a 'railway' within the meaning of the Act Section 3 (4) of the Act defines 'railway'. The relevant portion is as under:--

'railway' means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes.....

(b) all lines of rails, siding or branches worked over for the purposes of, or In connection with, a railway.' It is thus apparent that a siding or a railway line will be a 'railway' only if it is meant for the purpose of public carriage of goods etc. If it is not meant for public carriage of goods it would not be a 'railway' within the meaning of the Act. The question, therefore, that arises for determination is whether this railway siding was meant for public carriage of goods or not As the Act defines 'Railway' to be a line of rail or siding meant for public carriage, it does not exclude, rather contemplates the existence of railway lines or sidings not meant for public carriage of goods. The Railway Administration, has naturally to maintain a number of lines for rails and sidings for its own requirements; at and near every important railway station there are a number of sidings.

7. The Administration maintains lines for public use, but as by the very nature of its functioning, requires exclusive sidings, it must be for the Railway Administration to decide which are meant for its exclusive use and which are meant for public use. Normally it should also be expected that the Railway will give a declaration of all stations and sidings which are meant for public use, as without it the public cannot know about the existence thereof. In the supplementary counter-affidavit of Sri G. L. Srivastava it was stated that the Indian Railway had published a list of Railway Station, sidings etc., for information of the public. In that book, Chapter VIII contains alphabetical list of sidings. They have been classified as public, departmental and private. The siding in dispute at Shankargarh, has not been shown in this List The argument of the learned counsel for the respondent is that the omission in this list shows that the present siding is not even a recognised siding much less a public siding; while the contention of the learned counsel for the petitioner is that the omission indicates that the alphabetical list of sidings published by the Railway is not an exhaustive list and accordingly no inference

should be drawn from this circumstance. Whether the contention of the learned counsel for the respondent is correct or not, the list goes to show that this siding was not treated or declared as a public siding. On the record there is nothing to show that the Railway Administration had declared or opened this siding as a public siding, i.e., a siding in respect of which any member of public may have any rights,

8. The petitioners could claim relief by way of a writ of mandamus only if they had succeeded in establishing that the siding in dispute is a railway siding meant for public carriage of goods. The material on record is not sufficient for holding that the siding in dispute is a public siding. As it has not been proved to be public siding it cannot be deemed to be 'railway' within the meaning of the Act. Section 27 (1) of the Act is thus of no avail. Consequently no writ of mandamus or certiorari can be granted.

9. In the result the petition fails and is dismissed. But as the petitioner had occasionally been permitted to load ballast at this siding, parties are directed to bear their own costs.

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