

In Re: Komaran and Govindaswamy

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Court : Chennai

Decided On : Nov-15-1921

Reported in : 66Ind.Cas.520; (1922)42MLJ21

Appellant : In Re: Komaran and Govindaswamy

Judgement :

ORDER

Oldfield, J.

1. We are asked to interfere in revision with the conviction of accused of an offence punishable under Section 109(i) of Act IX of 1890 and their sentences, each to pay a fine of Rs. 5-0-0 or in default to suffer one week's simple imprisonment.

2. There was some dispute as to the facts in the Lower Courts; but I take them as found to be that on 2nd May 1920 accused passengers at Mettupalayam Station by the Madras Mail train, entered and persisted in remaining in a third class compartment, to which a card had been attached, purporting over the initials only of the Senior Ticket Examiner to reserve it for Europeans and Anglo-Indians. The questions argued before us are whether (1) the attaching of such a card could effect a reservation at all, (2) whether a reservation for Europeans and Anglo-Indians is, in the words of Section 109(1), a reservation for the use of another passenger, (3) whether a reservation for those classes is with reference to Section

42(2) within the powers of the Railway and can be recognised by a Criminal Court.

3. The second of these questions raises the general point of construction, whether the reference in the section to reservation for another passenger covers reservation for a class. It cannot in my opinion be answered by direct reference to any portion of the Act, since there is no definition of the term 'passenger' and it is not possible to define it, as we are asked to do, with reference to Section 68, as 'a person who actually enters a railway carriage for the purpose of travelling,' in view of its wider use in other Sections, of which Section 51(e) with its mention of 'means of transport which may be required for the convenience of passengers carried or to be carried' is the clearest. Nor, with all respect, is it sufficient to rely On Section 23, General Clauses Act (X of 1897), and the principle that the singular includes the plural or on the analogy of reservation for a regiment or theatrical company referred to by Walsh, J., in *Emperor v. Brijbasi Lal* I.L.R. 42 All. 327. For in such cases the reservation would, it is to be supposed, have been made in consequence of an application, on which the number and identity of the passengers would have been, at least approximately, ascertained. But that will not be the case as regards the class of Europeans or Anglo-Indian passengers, until they take their tickets or at least intimate their intention to travel; and it is significant that, as the Traffic Working Orders of the Railway produced by the Public Prosecutor show, reservation for the class now in question has to be made at the starting station of all long distance main line trains, whether or no passengers of that class are there, to provide for the contingency of their travelling from later stations. In the present case there is in fact the evidence of Prosecution Witness 1, the Station-master, that seven or eight Anglo-Indians were in the compartment, when accused tried to enter; and, as there were in the present case actual passengers to benefit by the reservation, it may on that ground be held to be of the kind contemplated by Section 109. We have however been asked to deal with the case on the general considerations; and we have then to decide whether the reservation referred to in that section is one for an actual passenger or passengers or includes reservation for possible/passengers also.

4. No relevant authority relating either to railways or to general canons of interpretation has been cited; and here, as in connection with the next branch of

the defence argument, the decision must be based on the policy of the statutes as a whole as well as the terms of the particular provision under construction, The Railways Act, as its preamble states is intended to consolidate, amend and add to the law relating to railways. But there are, and, in view of the complexity of modern railway working, must be many things usually and properly done by a railway, for which no explicit legal provision is made. There is for instance no such provision for the maintenance of waiting rooms or refreshment rooms or, what is material for the present purpose, for any reservation of accommodation on trains, except in cases in which it is compulsory, for females under Section 64 or infected persons under Section 71(3). It is true that under Section 47(1)(b) the railway company is to make general rules consistent with the Act for providing for the accommodation and convenience of passengers, which under clause (3) of the section shall take effect, if the sanction for them of the Governor-General in Council is obtained. But the object and result of making rules with such sanction is only to make their breach an offence punishable by the Courts. It is not obligatory to obtain that sanction, if the railway sees its way to enforce the rule without it or a penalty is provided incidentally in some other portion of the Act; and the existence of such unsanctioned rules is recognised explicitly in in Section 101(b); see also *Emperor v. Weir* 8 I.C. 134. The considerations arising in connection with Section 42(2) will be dealt with later; but, apart from them, the company has, in the words of Lord Halsbury in *Perth General Station Committee v. Ross* (1897) A.C. 479 'an absolute right to regulate its own traffic in its own way, its own interest being the best security that its strict legal right to do so will not be abused'. Generally then it is legitimate for it to exercise the power, its possession of which is recognised in Section 109, to reserve accommodation in accordance with its own view, whether of the prospect of direct and immediate profit or of the wider considerations originating in its desire to secure the general comfort of the public; and in making a reservation for a class it must be supposed to have acted, as it is entitled to do, on one or other of these motives.

5. Reservation for a class, such as in question in the present case, being legitimate, the only question is whether it can be enforced by the special procedure provided in Section 109 or whether resort must be had to the more cumbrous methods afforded by the general law, a prosecution for criminal

trespass or a suit for an injunction. And here the conclusion in favour of the legitimacy of reservations for a class is material. For, as they are legitimate, there is no reason why the special remedy afforded by Section 109 should not be regarded as available to enforce them equally with others, the mischief, the infringement of the company's right to control its passenger traffic in its own way, being in all cases of reservation the same. In these circumstances, the conclusion must be that reservations for possible and actual passengers are equally contemplated by Section 109 and that the compartment entered . by accused in this case was reserved for another passenger within the meaning of that section.

6. The right of a Railway Company to regulate its own traffic in its own way is again material in connection with the question whether that compartment had in fact been reserved at all. For the argument on accused's behalf is that it had not, inasmuch as under the Company's Traffic Working Orders Nos. 58(a) and 172(a) reservation can be made only by affixure of a card signed by the Station Master, as though a Station Master had no powers to control traffic in his station independently of the existence of a rule and only a reservation made in strict compliance with those Orders need be recognised by the public, But, as the Station Master deposed, the Orders are not available to the public, and they are not general rules, published under Section 47, to which clause (6) of that section applies. They therefore in no way resemble a power of attorney, from which the Station Master's authority to deal with the public in this or any other matter is derived, but are merely the domestic code, which every organization, as large as the South Indian Railway, must formulate for the guidance of its employees. The company may and doubtless does insist on adherence to them and in the, matter now in question such adherence would-secure a reasonable and convenient notice to the public of the fact of reservation. But they do not provide the only or an obligatory way of giving such notice; and, when, as in the present case, it can be shown to have in fact been given and the reservation to have been effected by another method, there is no reason why the result of the adoption of that method should be disregarded. For the facts found are that, when accused had entered the compartment in defiance of the card initialled by the Senior Ticket Inspector purporting to reserve it, the Station Master told them that it was reserved and asked them to go elsewhere, So far as the right to reasonable notice of the

reservation is concerned, the accused cannot find fault with this procedure, since they had clear notice from an authority, whose competence in the matter is beyond dispute; and, so far as the validity of the reservation thus effected is concerned, it is useless to consider whether the facts are within the principle of ratification as laid down in *Keighley Maxsted and Co. v. Durant* (1901) A.C. 240 where the clearer ground of decision is available, that the Station Master by what he said simultaneously reserved the compartment and informed the accused of the reservation. The objection that the reservation thus made and the notice of it to accused and other members of the public were oral instead of by a written card is unsustainable on the view, which I take of the scope of the Traffic Working Orders, the only foundation on which accused's claim to notice of the latter description has been supported.

7. Two general objections have been taken by the learned Public prosecutor to our dealing with the merits of accused's remaining contention, that based on Section 42. He has urged first that they are debarred from it, because the taking of proceedings, except as provided by the Act, for anything done or any omission made by the Railway in contravention of that or any other provision in Chapter V is prohibited by Section 41. It is a sufficient answer that accused, in alleging such contravention in defence in the Lower Courts or prosecuting the revision proceedings on the basis of its occurrence, cannot be said to have taken proceedings. Next it is urged that the expression 'traffic' in Section 42(2) can be and is used only in connection with the conveyance of animals and goods and the fixing of charges therefor. But this is opposed to the definition of 'traffic' in Section 3(11) as including 'rolling-stock as well as passengers, animals and goods'. I therefore turn at once to the contention, on which accused rely, that the reservation of accommodation for Anglo-Indians or any other class of passengers is an undue or unreasonable preference in favour of a particular description of traffic, which Section 42(2) forbids.

8. This contention was supported by no authority; and in fact the reason for treating these reservations as infringements of the section was put in two ways only, that compartments reserved for Anglo-Indians are frequently empty or almost empty, when other passengers suffer inconvenience owing to over-crowding in

other compartments, and that it is an unreasonable preference to allow Anglo-Indians access, not only to the compartments reserved for them, but also to the rest of the train, to which ordinary passengers are restricted. These considerations must in the absence of any other suggested test be dealt with in the light of common experience; and they do not seem to me to correspond with any intention on the part of the railway to give a preference. They cannot, it is to be observed, be connected with the distinct question whether the accommodation provided for ordinary passengers was in the accused's train or is usually sufficient or as generous as such passengers would desire. Then firstly the alleged inconvenience to other passengers is not necessarily the consequence of one compartment being reserved; nor, if it were not reserved, would it necessarily be available to provide them with increased accommodation. And secondly there is no reason for supposing that Anglo-Indians contrary to their own convenience use the unreserved portion of a train in preference to that reserved for them to an extent, which affords a grievance of any substance. Special treatment of a class need not involve a preference in its favour or more than, in the words of Piggott, J. in *Emperor v. Brijbasi Lal* I.L.R.(1920) All. 327 already referred to, 'provision by the Railway for the accommodation and convenience of its passengers generally, taking a broad view of its practical effect'; and it has not been shown how any other consideration is in question here. It is in fact, as Walsh, J. said in his fuller judgment, 'merely a case of providing for the general convenience of the travelling public, which has been left by the Legislature in India, as it has always been left by the Legislature in England,...to the discretion of experienced railway administrators'; and we must accept the exercise of that discretion as legitimate in the present case, in which the contrary has not been shown. In my opinion therefore the argument based on Section 42(2) must be rejected.

9. No ground having been shown for interference in revision, I would dismiss the petition.

Krishnan J.

10. With all respect for my learned brother, I regret I am unable to concur with him in this case, for I have come to the conclusion that the accused are entitled to be

acquitted on the short ground that the 3rd class compartment in question is not proved to have been properly reserved for Europeans and Anglo-Indians as the prosecution alleged. It is conceded by the Station Master of Mettupalayam, Prosecution witness 1, that the label that was on the carriage door, was not the usual printed label issued by the Railway Company similar to Exhibit I but was only a piece of paper on which was written 'reserved for Europeans and Anglo-Indians'; it did not bear his signature or initials. The initials on it 'A. V. D.' were, he says, those of his ticket examiner. He also admitted in cross-examination, and other witnesses corroborated it, that there was no rule authorising him to delegate the power of signing the label to the ticket examiner.

11. At the time this incident happened the rule was that the Station master should sign or initial the reserve label as shown by the form of card in Rule 172(a) of the Traffic Working Orders then in force and by Exhibit I that is produced. The rule was changed in January this year so as to enable the senior ticket examiner to sign the label at stations where there are ticket examiners (See Rule 260 of the new rules); and Mettupalayam Station is one of those stations. But this change of rule does not affect the present case as the incident in question took place in May 1920. It is thus clear that the compartment in question did not bear a proper label reserving it for Europeans and Anglo Indians.

12. The question then is are the accused liable to be punished under Section 109, Indian Railways Act, for entering such a compartment and refusing to leave it when asked. I will assume in deciding it that the section applies to a case of reservation for a class of persons like-Anglo-Indians and is not confined to cases of reservation for specific individuals. It seems to me that before a person can be punished under the section it must be shown that the compartment was properly reserved according to the railway rules. The Traffic Working Orders may not be issued to the public but the travelling public knows what is done every day when compartments are reserved and I think a. passenger who knew the rule in force was entitled to disregard a reserved label put upon a compartment unless it was properly authenticated by the initials or signature of the Station master. The Station master himself has to observe the formalities required by the rules before he can properly reserve a compartment as his own authority to do so is given to

him by the railway administration subject to the rules. It is said that because the Station master himself in the present case told the accused that the compartment had been reserved they should have accepted his word for it... I am not satisfied that the accused were bound to accept his oral statement and act on it. In fact as mentioned in the judgment of the appellate Magistrate last paragraph the accused objected that the slip attached to the compartment was not an 'authorised document' and requested the railway officials to put up an "authorised" one but that was not done. I am not prepared to say in these circumstances that the accused were committing an offence under S 109 in continuing to remain in the compartment. Whether they have transgressed any other rule or section we need not consider.

13. It is true the lower courts have found that the compartment was reserved but I am unable to treat their finding as one of fact and accept it as they have not considered, the question from the point of view I have adopted. I would reverse the conviction and direct the fines if paid to be refunded.

14. In the view I take it is not necessary to discuss the other questions dealt with by my learned brother and I express no opinion about them.

15. By Court : As we differ, the case must be laid before the Chief Justice for orders as to its further disposal.

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