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Court : Kolkata

Decided On : Aug-13-1951

Reported in : AIR1952Cal496

Judge : Bose, J.

Acts : Constitution of India - Articles 23(1) and 226

Appeal No. : Civil Revn. Case No. 616 of 1951

Appellant : Dubar Goala and anr.

Respondent : Union of India (Uoi) Representing E.i. Rly. and ors.

Advocate for Def. : Bhabesh Chandra Bose, Adv. (for Nos. 1, 2 and 3) and ; Mukti Pada Chatterjee, Adv. (for No. 4)

Advocate for Pet/Ap. : Nirmal Chandra Sen, Adv.

Judgement :
ORDER

Bose, J.

1. This is an application under Article 226 of the Constitution for appropriate Writ or direction upon the respondents (opposite parties) to show cause why certain contracts mentioned in the petition should hot be cancelled and why the opposite

parties should not forbear from levying certain license fees upon the petitioners and also forbear from compelling the petitioners to do Begar or forced labour at the Howrah Railway Station.

2. The petitioners are two licensed porters at Howrah Railway Station and hold licenses issued to them by Ballabhdas Agrawal who is a Railway Contractor under the East Indian Railway and opposite party No. 4 in this application. The opposite party No. 4 supplies and arranges daily attendance of porters at Howrah Railway Station under a contract entered into with the East Indian Railway administration. The terms and conditions in such contract have been varied from time to time and a copy of the present contract which governs the relations between the opposite party No. 4 and the Railway administration is annexed to the affidavit filed on behalf of the Union of India. It Is 'inter alia' provided in the said contract that:

(a) the Contractor shall supply and arrange the daily attendance of approximately 900 porters for the purpose of carrying passengers' luggage and belongings and for the purpose of supervising their work such number of Mates, Supervisors and Sardars as will be determined adequate by the Railway Administration. The number of porters is however subject to revision by the Administration from time to time as may be found necessary due to change in the circumstances.

(b) The Contractor shall also employ temporary porters, not exceeding 435 in addition to the number mentioned in Clause (a), during an emergency, to meet any unexpected rush.

(c) The Contractor shall also arrange 90 porters called Parcels porters daily for conveyance of parcels traffic from godowns and offices to different platforms and loading same in the breakvans of trains and also loading and unloading of parcels, cash safes and various other works mentioned in the contract.

(d) The Contractor shall also supply from amongst the licensed porters mentioned in Clauses (a) and (b), for performing the various works to be done by the parcels porters, if required to do so by the Railway Administration. Such men should be booked in proper rotation only and no man should be employed for this work for more than two hours a day.

(e) The Contractor shall be permitted to levy on each of the licensed porters a license fee not exceeding Rs. 3/- per month to cover supervisory and other overhead charges.

(f) The Contractor shall enter into an agreement in the form annexed, with each and every porter.

(g) The Contractor shall see that no licensed porters demand higher charge for carrying luggages of passengers than is prescribed in the contract.

(h) The Contractor shall be paid by the Railway administration a monthly subsidy not exceeding Rs. 5,000/- and out of the said sum the contractor shall pay to the 90 parcels porters at the rate of Rs. 1/8/- per man per day and the contractor shall be entitled to retain a sum not exceeding 25 per cent of the total amount paid by him to the parcels porters for supervisory charges, profits etc.

(i) The Contractor will be paid in addition an amount equivalent to the salary of 60 men per month at the rate of Rs. 1/8/- per man per day, i.e. Rs. 2700/- per month to remunerate the licensed porters engaged in handling parcels as required under Clause (d) aforesaid. The entire additional subsidy of Rs. 2700/- per month will have to be disbursed amongst the licensed porters in proportion to the main hours put in by them in handling parcels etc.'

3. The contract which a licensed porter is required to enter into with the opposite party No. 4 in pursuance of the parent contract provides 'inter alia' as follows:

'(a) I will pay you between the 1st and 8th day of each month a license fee of Rs. 3/-only and in default of payment I will not be permitted to work as a porter as aforesaid.

(b) I will perform railway porterage work such as handling booked luggage and parcel at Howrah Station at least two hours every day as directed by you or by your supervisors, sardars or Mates. I agree to do this in further consideration of your not charging a higher licence fee than Rs. 3/- per month as aforesaid.

(c) I will give you one week's notice before I cease to work as a porter as aforesaid and I will be given one week's notice before you revoke my licence.'

4. The petitioners challenge the aforesaid contracts as being, illegal and in derogation of the fundamental rights of the petitioners guaranteed to them under Article 19(1)(g) of the Constitution. The petitioners also challenge the right of the opposite parties to levy the licence fee and to compel the petitioners to buy uniforms and badges from the opposite party contractor. It is stated in the petition that it is incumbent upon the opposite parties to cancel the said contracts.

5. Although the petition asks for several reliefs the Rule Nisi was issued only to show cause why the opposite parties should not forbear from compelling the porters to perform Begar or forced labour.

6. It is an elementary proposition that a Mandamus does not lie to enforce or restrain the performance of a contractual obligation ('P. K. Banerjee v. Simonds', : AIR1947 Cal307 Further it is inappropriate to grant a declaration in an application under Article 226 that a particular contract is illegal and therefore unenforceable because it contains a provision for Begar or forced labour. The petitioners have voluntarily entered into the contract. There is no suggestion that at the initial stage when they first came into contact with the Railway Contractor (opposite party No. 4) they were compelled to enter into the agreement under threat or duress. Even if. the agreement had in fact been entered into under duress the remedy would be by an action and not under Article 226 of the Constitution. It is because the porters offered to undertake the work of a porter on the terms and conditions of a contract applicable to all porters of the same class that they have rendered themselves liable to do this work of two hours a day for the Railway. It is open to the petitioners to give up the work of railway porters and remove themselves from the jurisdiction of the railway administration or to cancel their obligation with the railway contractor. The very idea of a contract or agreement negatives any suggestion of forced labour.

7. Moreover, from the affidavit it is clear that although in the earlier contracts between the railway administration and the opposite party No. 4 there was no provision for any remuneration for the services performed by the-porters for two

hours in handling parcels, luggages etc., subsequently payments of subsidies were provided in such contracts and at the time this application was moved, the porters including the petitioners were getting some re--muneration for this two hours' work done for the railway. In the affidavit in reply it is admitted that a sum of Rs. 2/8/- per head per month is paid to the porter working in the parcels area and a sum of Rs. 1/4/- per head per month is paid to those porters in the Station area as token payment for the aforesaid Begar or forced labour of not less than two hours per day.

8. In the petition this very important and material fact has been suppressed. No mention is made that any subsidy was paid by the Railway authorities or the porters received any remuneration though insignificant. A specimen contract is annexed to the petition but this does not include the subsidy clause. It is obvious that an old form of contract was annexed to the petition in order to conceal the fact that the porters are receiving any remuneration for the work done by them for a period of two hours daily in the parcels area. There can be no doubt that this fact was deliberately suppressed in the petition as the petitioners' legal advisers felt that the mention of this fact would considerably weaken their case and would have created difficulties in getting a Rule issued from this Court.

9. It is well settled that a petitioner applying for an ex parte order or rule must set out with the fullest disclosure the material facts in his petition. This has not been done and in my view the Court has been deceived by the suppression of the fact that the petitioners were being paid some remuneration for the work done in the parcels' area. The principle enunciated in 'REX v. KENSINGTON COMMRS', (1917) 1 K B 486, applies to this case and this petition must fail on this ground alone. It was sought to be contended by the learned Advocate for the petitioners that the petitioners had no knowledge of the payment of the subsidy or of the existence of any provision for such subsidy in the parent contract and therefore this fact was not mentioned in the petition. But the affidavit in reply does not make out any such case nor can such an explanation be accepted as true.

10. Coming now to the question whether the work done by the petitioners can be regarded as Begar or forced labour within the meaning of Article 23(1) of the

Constitution it appears to me that upon the facts of this case it cannot be said that the petitioners are doing Begar or forced labour. As I have pointed out already the very idea that the petitioners had voluntarily agreed to do this extra work by entering into a contract to that effect repels the idea of their work being a forced labour.

11. Furthermore, it is clear from the affidavits and the documents produced before me that the porters have to pay a reduced licence fee of Rs. 3/- per month for their agreeing to do the work in terms of the contract entered into between them and the railway contractor (opposite party No. 4). It has been pointed out that formerly the licence fee was Rs. 7/- per month for those porters who did not do the extra work. In addition to this, another fact must be taken into consideration and that is that the porters get the advantage of the free user of the Railway Station or premises and they are allowed to earn their livelihood by being admitted to the Railway premises which is the private property of the Railway.

It was submitted by Mr. Nirmal Chandra Sen, the learned advocate for the petitioners, that the system of realising the licence fee is not warranted by any statute or rules framed under any statute and so this is an illegal exaction and this is force per se. I cannot accept this contention. There can be no doubt that the Railway authorities have the power to regulate the use of the station. In the case of 'PERTH GENERAL STATION COMMITTEE v. ROSS', (1897) A C 479 at p. 483, Lord Halsbury observed as follows:

'But I am of opinion that the station is absolutely the property of the Railway Company, and that the rights of the Railway Company are just as absolute in the first instance as those of any other proprietor. That by appeal to the proper tribunal they may be compelled to permit passengers and traffic under a variety of conditions under appropriate orders of Court is true; but that against their will any member of the public has a right to force himself upon the platform or into the booking office I cannot agree. The public has right to go and has a right to enter into a contract with them; and the Railway company may be compelled if they refuse either by action at the suit of the complaining party or by an application to the Railway Commissioners. But I should be sorry to throw any doubt on the

absolute right of the Railway company in the first instance to regulate their own traffic in their own way and to refuse access to their station in the circumstances stated in this case.'

12. In the case of 'RANI BALA SETT v. E. I. Rly. 55 Cal W N 522 at p. 527, Harries, C. J. and Banerjee J. observed as follows:

'The Railway Station just as a dock or Harbour is private property and members of the general public have no right to use that property. They use it by permission...A member of the public has no right to use a Railway Platform for an evening walk. It is private property just as a Harbour is a private property. But it is a private property which members of the public in large numbers use. But it is user connected with travelling or business with the railway and not user as of right.'

Reliance was placed on behalf of the petitioners on two Allahabad cases reported in 'RAMA v. EMPEROR', 35 All 136 and 'EMPEROR v. CHANDAI, 56 All 254. These cases have no application, as there is no question of implied permission to use the Railway premises so far as Howrah Railway Station is concerned. Moreover, I follow the Calcutta case in preference to the Allahabad cases.

13. I do not find any element of force or illegality in the system of licence or in realising the fees for such licences. The petitioners are paid some remuneration, however insignificant it may be, for their two hours' labour. Further- they get the benefit of a reduced licence fee and in addition they are allowed the privilege of free user of the Railway premises for earning their livelihood. In the circumstances the petitioners cannot be said to be doing Begar or forced labour within the meaning of Article 23(1) of the Constitution of India.

14. In my view this petition must fail. The Rule is accordingly discharged with costs. The petitioners will pay one set of costs to the Union of India and another set of costs to the opposite party No. 4. The hearing-fee is assessed at three gold mohurs in respect of each set of costs.