

PETITIONER:
INDER MAL JAIN & ANR. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT 08/12/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA, R.B. (J)
MISRA RANGNATH

CITATION:
1984 AIR 415 1984 SCR (1) 1016
1984 SCC (1) 361 1983 SCALE (2) 923

ACT:

The Indian Railways Act, 1890-Sec. 114A-Validity of-Whether ultra-vires Art. 19(1) (g) of Constitution of India.
The Railway Tourist Agent Rules, 1980-Validity of-Conditions prescribed for becoming authorised agent-Whether arbitrary, unreasonable and irrelevant-Whether the Rules ultra vires the Act and Art. 19(1) (g) of the Constitution.

HEADNOTE:

The petitioners who claimed to be carrying on the business as railway travel agents and rendering service to the travelling public in booking II class seats and berths in various passenger trains, challenged the validity of sec. 114A of the Indian Railways Act, 1890 as being ultra-vires Art. 19(1) (g) of the Constitution and also the validity of the Railway Tourist Agent Rules, 1980 as ultra-vires the Act, and Art. 19(1) (g) of the Constitution on the ground that the Rules and the Act placed unreasonable restrictions on the petitioners' right to carry on their lawful business guaranteed by Art. 19(1) (g) of the Constitution. The petitioners argued that the conditions of eligibility prescribed in the Rules for obtaining status of authorised agents in their cumulative effect were impossible of compliance and were so deliberately drawn up as to help and encourage wealthy commercial heavy-weights to obtain recognition simultaneously denying the same opportunity to persons like the petitioners who cater to the needs of the common man. The petitioners urged that railways earn bulk of their revenue from second class travelling passengers and they were the most neglected and to such needy persons, petitioners were affording some respite from standing in queues for hours, to be jostled out by shutting the ticket window in their face. It was also stated that the court should be realistic in taking note of the prevailing corruption in booking railway tickets which would be further accentuated if every intending passenger had to stand in the queue for hours and return empty-handed.

Dismissing the petitions, but directing the Railway Board to prepare an appropriate scheme,

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HELD: If a privilege is granted to do a certain thing,

it would be open to prescribe conditions for enjoying the privilege. The railway administration alone should ordinarily sell its tickets. Sec. 66 of the Act enables the administration to appoint authorised agents for sale of tickets. These authorised agents must of necessity fulfil certain criteria. The criteria appear to

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have been devised with an eye on extending facility to foreign travellers as well as the financial viability to secure against failure to pay for tickets sold by recognised agents. With this end in view, the conditions for minimum financial guarantee and having a Money Changer's licence and other allied conditions were prescribed. Intendment underlying the scheme of setting up authorised agents is not only to check sharp practices, curb fleecing of gullible passengers, but render efficient service. The Rules ensure fulfillment of the intendment underlying the impugned provisions. Viewed from this angle, the conditions are neither irrelevant nor arbitrary. It is stated by the respondents that as many as 17 agents have been given the status of authorised railways tourist agents in Delhi alone. This is not controverted. Therefore, the conditions are capable of being complied with. Failure or inability of some of the petitioners to comply with them would not be sufficient to reject them as unreasonable, arbitrary or irrelevant. The conditions are reasonable and are conducive to the objects sought to be achieved. [1022 A-E]

Ramana Dayaram Shetty v. The International Airport Authority of India and Ors. [1979] 3 S.C.R. 1014 and M/s Kasturilal Lakshmi Reddy and Ors. v. State of Jammu and Kashmir and Anr., [1980] 4 S.C.C. 1 referred to.

Sec. 114A of the Act merely prescribes punishment for unauthorisedly carrying on of business of procuring and supplying railway tickets. If sec. 66 envisages appointment of authorised agents obviously anything to the contrary would be contravention of sec. 66 and if it is made punishable under sec. 114A of the Act, the section would not be ultra vires the Constitution. [1023F]

An agency has to be devised to cater to the needs of class II passengers, which can render service in this behalf. The agency has to be subjected to strict control and regulatory measures. May be, that the petitioners were abusing their activities and were guilty of some sharp practices. It cannot be said that all of them were of the same class, and it also should not be forgotten that their activities were facilitated by their counter parts in the booking-office. It can be safely said that to some extent, it was a joint venture. Therefore, merely dismissing these petitions would be further adding to the miseries of the travelling public. The Railway Board is therefore directed to prepare a scheme for recognising travel agents catering to the needs of the class II passengers with sufficient control over their activities and put the same before this Court within three months from today. [1024F-H]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions No. 8200-01/83, 4386-90/82, 4298-4308/82 and 3762/82.

(Under Article 32 of the Constitution.)

Anis Shayarwardy and C. P. Pandey for the Petitioners in WPs. 8200-01/83.

S. S. Khanduja and Yaspal Dhingra for the Petitioners in WPs. 4386-90/82.

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P. Govindan Nair and Altaf Ahmed for the Petitioners in WPs. 4298-4308/82.

Shankar Ghosh, B. P. Maheshwari and B. P. Singh for the Petitioners in WP. 3762/82.

V. C. Mahajan, R. N. Poddar, Ms. Halida Khatun and Ms. A. Shubhashini for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. Petitioners in this group of petitions under Art. 32 of the Constitution claimed to be carrying on the business as railway travel agents. One of the petitions in this group is filed by an association styled as Travellers Service Agents Association (Regd.). The member of the Association also claimed to carry on business as railway travel agents. Petitioners and the members of the Association claim to be engaged in the business of travel agents over a decade and a half and according to them they are rendering useful service to the travelling public in booking seats and berths in various passenger trains. According to them they ordinarily cater to the needs of middle-class and lower-middle class passenger-the common man-travelling by second class in the railways who cannot afford to wait for long hours standing in queues at railway stations and yet cannot afford to avail of the services of the railway tourist agents who generally cater to the needs of the wealthy elite of the society. Petitioners complain that the railway administration encourage wealthy and influential railway tourist agents by sacrificing the interest of the railway travel agents like the petitioners and that thereby the railway administration is depriving the large lower middle class travellers from availing of the services of the petitioners which is available at a cheap price of roughly Rs. 8 per ticket. According to the petitioners, the business carried on by them is a lawful one but since the introduction of Sec. 114A in the Indian Railways Act, 1890 ('Act' for short) they are being harassed, tortured and mulcted by the railway administration. They aver that unreasonable restriction are placed on their right to carry on their lawful business guaranteed by Art. 19(1) (g) of the Constitution by the rules framed by the Central Government under Sec. 47 of the Act styled as Railways Tourist Agent Rules, 1980 ('Rules' for short) which are ultra-vires the Act as also ultra-vires Art. 19(1) (g) and they are hounded out of their lawful business. Petitioners accordingly contend that not only the Rules but also Sec. 114A which came into

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force on May 11, 1982 by which in the absence of recognition, if the petitioners carry on their business they are liable to be prosecuted and sentenced to suffer imprisonment are ultra-vires Art. 19(1) (g) of the Constitution.

A comprehensive counter-affidavit was filed both in Writ Petition No. 3762/82 and Writ Petition Nos. 8200-8201/83 by one Vijay Kumar, Joint Director, Traffic Commercial (G) I in the Ministry of Railways. Broadly stated, the respondents contend that even before the insertion of Sec. 114A by the Indian Railways (Amendment Act, 1982, Secs. 70 and 114 of the Act prohibited transfer of a ticket or travel on a transferred ticket as also sale of a ticket or purchase thereof from anyone other than a railway servant or agent authorised by the railway administration in this behalf. Referring to the clandestine business carried on by the petitioners, it is stated in the counter-affidavit as under :

"It is submitted that unauthorised persons like the petitioners were, however, taking advantage of (i) the absence of any specific provision in the law prohibiting the carrying on of business in purchase and supply of rail tickets and (ii) of the fact that law does not require the intending passenger to personally or physically present himself as the booking counter for purchase of ticket for his journey, were and are purchasing tickets generally in fictitious names and thereby cornering reserved accommodation and compelling genuine passengers to turn to them for purchase of reserved tickets (booked in fictitious names) at heavy premia. These unauthorised persons thus make huge profits but the passengers who were found travelling on transferred tickets had to pay heavy penalties and undergo prosecutions. The unauthorised agents from whom these tickets were purchased invariably remained untraced. It is to deal with this situation that the impugned law (S. 114A) was considered necessary."

A further contention was raised that if the petitioners want to carry on their business as travel agents they must comply with the Rules framed by the Central Government under Sec. 47 of the Act and on being recognised under the Rules they would be entitled to carry on their business and therefore it is idle to contend that an embargo has been placed on the business carried on by the petitioners. It was

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contended that it had become necessary to save the travelling public from the unlawful activities of persons carrying on business as railway travel agents and that regulatory rules have to be framed and it cannot be said that these rules impose any unreasonable restriction on the petitioners' right to carry on their business. Qua Sec. 114A, it was stated that on receipt of persistent complaints from the public regarding black marketing in reservations by unauthorised travel agents and other persons. it was decided to provide a suitable check on their activities. A penal provision was enacted providing that the carrying on business of procuring and supplying tickets or reserved accommodation for journey by train unless so authorised by railway administration would constitute an offence and the same would be punishable. That is the genesis of the introduction of Sec. 114A in the Act.

Mr. Shanker Ghosh, who led on behalf of the petitioners followed by Mr. Govindan Nayar could not seriously contend that either the Rules or Sec. 114A were ultra vires the Act or the Constitution. The Rules were framed in exercise of the power conferred on the Central Government by Sec. 47 which provides that the Central Government shall make general rules consistent with the Act for the purposes set out in various clauses, the last clause being 'generally' for regulating the travelling upon, and the use, working and management of the railway.' Sec. 66 of the Act provides that every person desirous of travelling on a railway, shall, upon payment of his fare, be supplied with a ticket by a railway servant or an agent authorised by the railway administration in this behalf, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare. Travelling without a proper ticket is an offence punishable under Sec. 113 of the Act. The railway administration is therefore under an obligation to make arrangement for sale of tickets and Sec. 66 enables it either to make arrangement to sell tickets on its own or through or by an agent authorised by the railway administration in this behalf. If

Sec. 66 enables the railway administration to appoint authorised agent for sale of tickets obviously it was necessary for the Central Government to prescribe by rules, the conditions of eligibility, lay down criteria and guidelines for appointment of authorised railway agents, enjoying power to sell tickets which the railway administration would be bound to honour. With this end in view, the Central Government framed the Rules.

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The Rules prescribe conditions and criteria for appointment as a railway tourist agent. Briefly stated, they are: 1) that the intending agent must possess a trade licence from the competent authority to carry on the business of a tourist agent in India; 2) must be financially sound and should possess the latest Income-tax Clearance Certificate (I.T.C.C.) from the Income-tax Authority of India; 3) such an intending agent should have minimum paid-up capital of not less than rupees one Lakh to treat him as financially sound; 4) he should have obtained recognition to act as a travel agent from the Government; 5) he should have been carrying on the business of a travel agent for a minimum period of one year; 6) he should possess a Money Changer's licence from a competent authority to deal with and handle the foreign exchange in India; 7) he must have an office and the premises properly maintained with adequate conveniences at a central place in the city so as to accommodate the visit of sufficient number of customers and to provide them with the reasonable conveniences. The question is whether the criteria or conditions for eligibility for recognition as authorised railway tourist agent prescribed in the Rules are irrelevant or arbitrary. It was contended that the requirements amongst others that such a person must have a minimum paid-up capital of not less than rupees one Lakh, and that he must be carrying on the business as a travel Agent for a minimum period of one year and that he should possess a Money Changer's licence were considered so irrelevant by this Court that while granting interim relief of Oct. 8, 1982, interim injunction was granted restraining the railway administration from enforcing these conditions. The question is whether any or all of these conditions individually or collectively are so irrelevant to the object sought to be achieved by the Rules or are such as would smack of arbitrariness? The argument was that these conditions were so deliberately drawn up as to help and encourage wealthy commercial heavy-weights to obtain recognition simultaneously denying the same opportunity to persons like the petitioners who cater to the needs of the common man.

If what has been stated in the counter-affidavit filed on behalf of the railway administration that the petitioners or atleast some of them were guilty of cornering reserved accommodation and thereby compelling genuine passengers to turn to them for purchase of reserved tickets booked in fictitious names at high premia, it was absolutely necessary to cheque these illegal activities permitting exploitation of the harassed travelling public. If a privilege is

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granted to do a certain thing, it would be open to prescribe conditions for enjoying the privilege. The railway administration alone should ordinarily sell its tickets. Sec. 66 enables the administration to appoint authorised agents for sale of tickets. These authorised agents must of necessity fulfil certain criteria. The criteria appear to have been devised with an eye on extending facility to foreign travellers as well as the financial viability to

secure against failure to pay for tickets sold by recognised agents. With this end in view, the conditions for minimum financial guarantee and having a Money Changer's licence and other allied conditions were prescribed. The long-term view appears to be that those seeking service of tourist agents, must get a comprehensive service at one place, such as railway tickets, foreign exchange conversion, expertise about the business, easy access and legitimacy in business and indisputably the conditions extracted above assure the same. Intendment underlying the scheme of setting up authorised agents is not only to check sharp practices, curb fleecing of gullible passengers, but render efficient service. The Rules ensure fulfillment of the intendment underlying the impugned provisions. Viewed from this angle, the conditions are neither irrelevant nor arbitrary. It may be that the petitioners may not be able to fulfil the same, but that by itself cannot render them unreasonable. The conditions are reasonable and are conducive to the objects sought to be achieved. Failure or inability of some of the petitioners to comply with them would not be sufficient to reject them as unreasonable, arbitrary or irrelevant.

In this connection, however, Mr. Govindan Nayar relied upon *Ramana Dayaram Shetty v. The International Airport Authority of India* and *Ors.*(1) wherein it is observed that 'in a welfare state, the government activities have expanded so wide that licences are required before one can engage in many kinds of business or work and the power to give licence means power to withhold them and this gives control to the Government or to the agents of the Government or many people. It was further observed that many individuals and many more businesses enjoy largess in the form of Government contracts and that the Government cannot give or withhold largess arbitrary discretion or at its sweet will. Even, in the matter of Governmental largess, it was stated that the Government cannot act arbitrarily.' We fail to see how this observation would be of any assistance in this case. Similarly, the decision in *M/s Kasturilal*

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Lakshmi Reddy and Others v. State of Jammu and Kashmir and Another(1) would hardly be of any assistance. Sec. 66 enabled the railways to sell tickets through authorised agents. The Central Government framed rules for obtaining recognition as authorised agents and the Rules prescribed relevant conditions for efficient working of a recognised agent. There is no question of distributing Government largess in this case nor any arbitrariness in Governmental action. The challenge to the Rules on the ground of arbitrariness must fail.

One more contention may be noticed. It was urged that the conditions of eligibility for obtaining status of authorised agents in their cumulative effect were impossible of compliance with the result that under the pretext of regulatory measures a total embargo is placed on the business of the petitioners and therefore also the restrictions are unreasonable. In the counter-affidavit it is stated that as many as seventeen agents have been given the status of authorised railway tourist agents in Delhi alone. This is not controverted. Therefore the conditions are capable of being complied with. If the petitioners cannot afford to do the same, that would not render conditions unreasonable. Apart from this, we are of the opinion that conditions can be complied with.

The next attack was on the validity of Sec. 114A of the Act. Sec. 114A merely prescribes punishment for unauthorisedly carrying on of business of procuring and

supplying railway tickets. If Sec. 66 envisages appointment of authorised agents obviously anything to the contrary would be contravention of Sec. 66 and if it is made punishable under Sec. 114A of the Act, we fail to see how the section would be ultra vires the Constitution. Therefore the contention must be negatived.

Both Mr. Shanker Ghosh and Mr. Govindan Nayar strenuously contended that even if the Rules and Sec. 114A are not ultra vires the

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Constitution, the provisions of the Rules are so designed as to help big houses to carry on business as authorised tourist agent and they would hardly be interested in catering to the needs of common man belonging to lower middle-class passengers forming bulk of the travelling public, travelling by second class and paradoxically contributing major share in railway revenues. They also pointed out that going to the station half an hour before the departure of the train, buy the ticket and enter the train, find a seat or standing accommodation and perform the journey is a chapter in remote past. It was urged with some vehemence and acerbity but with full justification that railways earn bulk of their revenue from second-class travelling passengers and they are the most neglected and to such needy persons, petitioners were affording some respite from standing in queues for hours, to be jostled out by the shutting the ticket window in their face. It was also stated that the Court should be realistic in taking note of the prevailing corruption in booking railway-tickets which would be further accentuated if every intending passenger has to stand in the queue for hours and return empty-handed. By way of an additional limb to this submission, it was submitted that if someone from a long distance wants to come to Delhi and return the next day, how is he going to arrange for his ticket. Could he ever think of going to Thomas Cook and agents of their ilk and would he do his work for which he has come to Delhi or stand in a queue to purchase the return ticket? We see considerable force in this submission. It is a very realistic appraisal of the situation and we would not permit railway administration, a monopoly, turning blind eye to this desperate situation. It is said that comparatively it is easy to enter heaven than obtain a railway ticket. Add to this malaise the misery of the people coming from outside having no relations who can afford to waste their time to get the ticket. Therefore an agency has to be devised to cater to the needs of class II passengers, which can render service in this behalf. The agency has to be subjected to strict control and regulatory measures. May be, that the petitioners were abusing their activities and were guilty of some sharp practices. It cannot be said that all of them were of the same class, and it also should not be forgotten that their activities were facilitated by their counterparts in the booking-office. We can safely say that, to some extent, it was a joint venture. Therefore merely dismissing these petitions would be further adding to the miseries of the travelling public. We therefore direct the Railway Board to prepare a scheme for recognising travel agents catering to the needs of class II passen-

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gers with sufficient control over their activities and put the same before this Court within three months from today.

With these observations, all the writ petitions are dismissed with no order as to costs.

H.S.K.

Petition dismissed.

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