

PETITIONER:
UNION OF INDIA AND ANR.

Vs.

RESPONDENT:
B. N. PRASAD

DATE OF JUDGMENT 09/12/1977

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
SINGH, JASWANT

CITATION:
1978 AIR 411 1978 SCR (2) 397
1978 SCC (2) 462

ACT:
Railway Act, 1882, s. 138-Whether envisages any particular person holding a particular post be authorised to file a complaint--Interpretation of s. 138.

HEADNOTE:
A complaint u/s 138 of the Railways Act was filed by the Dy. Chief Commercial Superintendent N. F. Railway to the Sub Divisional Magistrate for passing an order of eviction of the respondent, a refreshment room contractor at Kishangunj Station, as he failed to hand over possession after the expiry of the agreement on 10-7-70 and in spite of notice to do so. The magistrate accepted the application and directed the eviction of the respondent. The respondent filed a writ petition in the Patna High Court that s. 138 could not be invoked as the complaint was not made by an authorised person i.e. the Chief Commercial Superintendent. The High Court accepted the plea, allowed the writ Petition and quashed the order of eviction.

Allowing the appeal by special leave the Court
HELD : (1) S. 138 of the Railways Act must be construed liberally, broadly and meaningfully so as to advance the object sought to be achieved by the Railways Act, as the provision is in public interest meant to avoid inconvenience and expense for the travelling public and gear up the efficiency of the Railway administration. [399 A]

(2) Section 138 has widest amplitude and takes within its fold not only a railway servant but even a contractor who is engaged for performing services to the railway and the termination of his contract by the Railway amounts to his discharge. [398 H, 399 A]

Nanik Awatrai Chainani v. Union of India, [1971] 1 SCR 650, followed.

S. L. Kapoor v. Emperor, A.I.R. 1937 Lahore 547, R. L. Mazumdar v. Alfred Ernest, A.I.R. 1959 Cal. 64; referred to.

(3) S. 138 only requires that an application should be made by or on behalf of the railway administration. It does not require that any particular person holding a particular post should be authorised to file a complaint. [399 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 93 of 1972.

Appeal by Special Leave from the Judgement and Order dated 29-11-1971 of the Patna High Court in Writ Jurisdiction Case No. 25/71.

U. R. Lalit and Girish Chandra for the Appellant.

D. P. Mukherjee, A. K. Ganguli and Mrs. E. Udayarathnam for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against the judgment of the Patna High Court dated 29-11-1971 by which the High Court has quashed an order of the magistrate, directing the respondent to be evicted from the railway premises. The appeal arises in the following circumstances

398

The respondent was a contractor employed by the railway for supplying food in the refreshment room at Kishanganj station. The last agreement signed with the contractor is dated 10-7-1967, which expired on 10-7-1970. Thereafter, a notice was given by the railway administration to the respondent for vacating the premises, and as he failed to do so, a complaint under s. 138 of the Indian Railways Act was filed by the Deputy Chief Commercial Superintendent N.F. Railway to the Sub-divisional magistrate for passing an order in terms of s. 138 of the Railways Act. The magistrate accepted the application and directed the eviction of the respondent.

The respondent thereupon filed a writ petition in the High Court, mainly on the ground that s. 138 could not be invoked as the complaint was not made by an authorized person. It was alleged in the petition before the High Court that the complaint made by the Deputy Chief Commercial Superintendent, was not maintainable, as it should have been filed by the Chief Commercial Superintendent, according to the provisions of the Railways Act. This plea appears to have found favour with the High Court which allowed the writ petition and quashed the order of eviction.

Appearing in support of the appeal, Mr. U. R. Lalit submitted a short point before us. He argued that s. 138 does not require that the complainant should be specifically authorized by the Railways in order to make a complaint maintainable. All that section 138 requires is that the application should be filed on behalf of the railway administration. There can be no doubt that the appellant was a high officer of the railway administration and, therefore, in a position to file an application for eviction on behalf of the railway administration. Section 138 runs thus :-

" if a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family representatives, refuses or neglects, after notice in writing for that purpose to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such even as aforesaid, any Presidency Magistrate or Magistrate of the

first class may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building and, remove ;Any person found therein and take possession thereof, or to take possession. of the books, papers, or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf."

In our opinion, a close perusal of this section clearly reveals that the provision has widest amplitude and takes within its fold not only a railway servant but even a contractor who is engaged for performing

399

services to the railway, and the termination of his contract by the Railway amounts to his discharge, as mentioned in s. 138. As the provision is in public interest meant to avoid inconvenience and expense to the traveling public and gear up the efficiency of the railway administration, it must be construed liberally, broadly and meaningfully, so as to advance the object sought to be achieved by the Railway Act. Furthermore, the section only requires that an application should be made by or on behalf of the railway administration. The section does not require that any particular person holding a particular post, should be authorized to file a complaints The- matter was considered by this Court in Nanik Awatrai Chainani v. Union of India(1), where this Court pointed out, while relying on decisions of the Lahore and Calcutta High Courts that the appellant in the case was a railway servant, and an order of eviction could be passed against him. This court relied on the definition of the railway servant as contained in section 8(7) read with s. 148(2) of the Act. The Court approved of the decision in S. L. Kapoor v. Emperor(2) and R. L. Mazumdar v. Alfred Ernest(3), which had taken the view that, even a contractor is a railway servant within the meaning of s. 138. In this connection, this Court observed

"The terms which govern the parties expressly reserve to the railway administration extensive power of directing and regulating the appellant's work and also to an extent, of controlling the manner of doing the work. Keeping in view the purpose and object of these agreements, namely, that of affording necessary amenities to the travelling public, retention of this over-all power by the railway administration is not only appropriate but necessary. The retention of this power by the railway administration, in our view, constitutes relevant material for sustaining the conclusion of the courts below that the appellant is a railway servant, as defined in s. 3(7) read with s. 148(2), Indian Railways Act, against whom action can be taken under s. 138 of the said Act."

This court went to the extent of holding that such a servant in view of the precarious contract under which he had entered in the Railway service was not governed by art. 311. In the case of S. L. Kapoor v. Emperor (supra), the following observations were made :-

"The termination of his service by the railway under cl. 21 of the agreement amounts to his discharge within the meaning of s. 138 of the Act, and he is therefore liable to

dispossession of the premises which he was occupying as a servant of the railway."

As already indicated, this case was approved by this Court in the decision mentioned above. In this view of the matter, it is manifest

(1) [1971] (1) S.C.R. 650.

(2) A.I.R. 1937 Lahore 547.

(3) A.T.R. 1959 Cal. 64.

400

that the High Court has taken an erroneous view of law in throwing out the complaint filed by the Deputy Chief Commercial Superintendent on the ground that he was not authorized to file the complaint. Even on the other question whether or not the respondent was a railway servant, as pointed out, the matter is no longer res integra and is concluded by the decision of this Court referred to above. For these reasons, the appeal is allowed, the judgment of the High Court is set aside and that of the sub-divisional magistrate is restored.

S.R.

Appeal allowed.

401