IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2009

CORAM

THE HON'BLE MR.JUSTICE K.CHANDRU

Writ Petition No.5226 of 1999

Tamil Nadu State Transport Corporation
(Coimbatore Division-I) Ltd.
Coimbatore.
(Formerly known as the Management
of Cheran Transport Corporation Ltd.) .. Petitioner

Vs.

1. The Presiding Officer
Industrial Tribunal
Tamil Nadu, Chennai.

2. The Workmen rep. by
the Secretary
Bharathia Transport Workers Union
1147, Sukrawarpet
Coimbatore-1. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the first respondent in I.D.No.3 of 1990 and quash the award dated 30.12.1997.

For Petitioner : Mrs.Vijayakumari Natarajan
For Respondents-2 : Mr.G.S.Saravana Bhavan

O R D E R

The petitioner is the State owned Transport Corporation. Aggrieved by the award passed by the first respondent/Industrial Tribunal in I.D.No.3 of 1990 dated 30.12.1997, the present writ petition has been filed.

2. The writ petition was admitted on 31.3.1999 and an order of Status quo was granted on the same day and it is still in force. The grievance of the petitioner/Corporation is that the Industrial Tribunal, in passing the award, nullified the resolution passed by the Board of Directors vide 61st meeting held on 29.6.1979, which reads as under:

> "To consider fixing of recognised hospital at Gobi Branch.
>
> The existing arrangements for inpatient treatment will continue for the existing employees. In respect of fresh entrants in future, inpatient treatment will be provided in the Government Hospitals only by paying the prescribed charges to Government."

3. The grievance of the second respondent/Union is that there is no justification in bringing cut off date, viz. 1.7.1999 in respect of medical facilities extended to the employees of the Corporation. Whereas, the stand of the petitioner/Corporation was that the Corporation was formed after nationalising several private operators operating in that District and subsequently, certain medical facilities were extended to the those employees, whose services were taken over from private operators. Whereas, the newly appointed persons were large in numbers. The Corporation does not want to deny the existing benefit to those old employees. Even with reference to the new recruits after 1.7.1979, they are eligible to get treated at Government Hospitals free of charge and therefore, there is no discrimination.

4. The second respondent/Union raised an industrial dispute under Section 2(k) of the Industrial Disputes Act. Since the conciliation could not end in any settlement, a failure report was sent by the Conciliation Officer to the Government. The State Government, by G.O.Ms.No.2232, Labour and Employment Department dated 22.12.1989, referred the following issue for adjudication by the first respondent Industrial Tribunal, viz.

> "Whether the discrimination in the Medical Concession (Facilities) shown by the management between the workmen who were made permanent before 1.7.1979 and after 1.7.1979 is justified?
>
> If not, to determine the type of medical concessions to be given for the workmen, who were made permanent after 1.7.1979?"

5. The Industrial Tribunal took the reference as I.D.No.3 of 1990 and issued notice to the parties. The second respondent/Union filed their claim statement and the petitioner/Corporation filed their counter statement before the Tribunal. The petitioner/Corporation examined their office bearer one Surali as W.W.1. On the side of the petitioner/Corporation, one Liaghat Ali was examined as M.W.1. The petitioner/Corporation filed twelve documents and they were marked as Exs.M1 to M12. On the side of the second respondent/Union, twelve documents were filed and marked as Exs.W1 to W12. The Industrial Tribunal, after examining the rival contentions, held that the cut off date fixed by the petitioner/Corporation was arbitrary and violative of Article 14 of the Constitution of India. In coming to the said conclusion, the Tribunal also relied upon the judgment of the Supreme Court in All India Reserve Bank Retired Officers Association v. Union of India [AIR 1992 SC 767] and D.S.Nakara v. Union of India [AIR 1983 SC 130]. In page 19 of the award, the Tribunal held as under:

> "Thus, it can be seen that the respondent has failed to submit any reason for choosing 1.7.1979 as cut off date to confer certain privilege to only those employees who have joined the respondent's services prior to 1.7.79 and denying the same to the employees who joined thereafter. The treatment of the employees in Government hospitals has been regularised by collection of Rs.120/- from each employee towards the hospital expenses for every year. There is no dispute with regard to treatment at the Government hospitals. The dispute is only with regard to treatment in recognised private hospitals. The discrimination between the employees who joined the respondent management before 1.7.79 and after 1.7.79 is unjustified. The choice of the cut off date is without any reason and the same cannot hold good. The reasons for such discrimination are also not submitted by the respondent management. In the above circumstances, I hold that the action of the respondent management in discriminating in the medical concession (facilities) between the workmen who were made permanent before 1.7.79 and after 1.7.79 is not justified."

6. Mrs. Vijayakumari Natarajan, learned counsel for the petitioner submitted that the petitioner/Corporation is fully justified in fixing the cut off date and no exception could be taken to the same. She also relied upon the judgment of the Supreme Court in R.Mukhopadhyay & Anr. v. Coal India Ltd. & Anr.

[1998 (2) LLJ 28]. In the said decision, the Supreme Court held that the introduction of two different LTC Schemes was valid and therefore, there cannot be any discrimination by an employee who was subsequently appointed. She also submitted that the Corporation was obliged to maintain the existing scheme in respect of earlier employees and whereas for the new employees, there is no such obligation and therefore, two different schemes can be adopted inasmuch as the employees are not prejudiced, because, even today, they can get treated at the Government Hospital at the headquarters, for which, they need not make any payment and therefore, the cut off date does not suffer from any infirmities. She also submitted that the other Unions have not raised any dispute and therefore, the dispute should not be entertained at the instance of the second respondent/Union.

7. Per contra, Mr.Saravana Bhavan, learned counsel for the second respondent/Union submitted that introduction of cut off date, viz. 1.7.1979, in the matter of medical facility, is clearly illegal and violative of Article 14 of the Constitution of India, as rightly found by the Tribunal. He also submitted that the petitioner/Corporation had obtained an exemption under Section 90 of the Employees State Insurance Corporation Act, 1948. The pre-condition for such exemption is that the benefits provided by the Corporation is substantially similar or superior to the benefits granted under the Employees State Insurance Act. Having got such an exemption from the Employees State Insurance Act, it is not open to the petitioner/Corporation to make a discrimination. The Tribunal rightly held that the introduction of cut off date is clearly a case of arbitrariness and therefore, it is violative of Article 14 of the Constitution of India. The Tribunal also held that no reason was given except the reason of finance and therefore, it refused to accept the stand of the petitioner/Corporation.

8. In this context, it is necessary to refer to the judgment of the Supreme Court in Air India v. Nergesh Meerza [1981 (4) SCC 335]. The Supreme Court in paragraphs 115, 116 and 117 of the said judgment, observed as follows:

> "115. This brings us now to the question as to whether or not the impugned regulation suffers from any constitutional infirmity as it stands. The fixation of the age of retirement of AHs who fall within a special class depends on various factors which have to be taken into consideration by the employers. In the instant case, the Corporations have placed good material before us to show some justification for keeping the age of retirement at 35 years (extendable up to 45 years) but

the regulation seems to us to arm the Managing Director with uncanalized and unguided discretion to extend the age of AHs at his option which appears to us to suffer from the vice of excessive delegation of powers. It is true that a discretionary power may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or norms the power has to be struck down as being violative of Article 14.

116. The doctrine of a provision suffering from the vice of excessive delegation of power has been explained and discussed in several decisions of this Court. In Anwar Ali Sarkar case19 which may justly be regarded as the locus classicus on the subject, Fazal Ali, J. (as he then was) clearly observed as follows:

> "But the second criticism cannot be so easily met, since an Act which gives uncontrolled authority to discriminate cannot but be hit by Article 14 and it will be no answer simply to say that the legislature having more or less the unlimited power to delegate has merely exercised that power.
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> ...
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> Secondly, the Act itself does not state that public interest and administrative exigencies will provide the occasion for its application. Lastly, the discrimination involved in the application of the Act is too evident to be explained away."

and Mahajan, J. agreeing with the same expressed his views thus:

> "The present statute suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of the special Act. The Act has left this matter entirely to the unregulated discretion of the provincial government."

Mukherjea, J. observed thus:

> "In the case before us, the language of Section 5(1) is perfectly clear and free from any ambiguity. It vests an unrestricted discretion in

the State Government to direct any cases or classes of cases to be tried by the Special Court in accordance with the procedure laid down in the Act.... I am definitely of opinion that the necessity of a speedier trial is too vague, uncertain, and elusive a criterion to form a rational basis for the discriminations made.... But the question is: how is this necessity of speedier trial to be determined? Not by reference to the nature of the offences or the circumstances under which or the area in which they are committed, nor even by reference to any peculiarities or antecedents of the offenders themselves, but the selection is left to the absolute and unfettered discretion of the executive government with nothing in the law to guide or control its action. This is not a reasonable classification at all but an arbitrary selection."

and Chandrasekhara Aiyar, J. elucidated the law thus:

"If the Act does not state what exactly are the offences which in its opinion need a speedier trial and why it is so considered, a mere statement in general words of the object sought to be achieved, as we find in this case, is of no avail because the classification, if any, is illusive or evasive. The policy or idea behind the classification should at least be adumbrated if not stated, so that the Court which has to decide on the constitutionality might be seized of something on which it could base its view about the propriety of the enactment from the standpoint of discrimination or equal protection. Any arbitrary division or ridge will render the equal protection clause moribund or lifeless.

Apart from the absence of any reasonable or rational classification, we have in this case the additional feature of a carte blanche being given to the State Government to send any offences or cases for trial by a Special Court."

and Bose, J. held thus:

"It is the differentiation which matters; the singling out of cases or groups of cases, or even of offences or classes of offences, of a kind fraught with the most serious consequences to the individuals concerned, for special, and what some

would regard as peculiar, treatment."

The five Judges whose decisions we have extracted constituted the majority decision of the Bench.

117. In Lala Hari Chand Sarda v. Mizo District Council it was highlighted that where a regulation does not contain any principles or standard for the exercise of the executive power, it was a bad regulation as being violative of Article 14. In this connection, the Court observed as follows:

> "A perusal of the Regulation shows that it nowhere provides any principles or standards on which the Executive Committee has to act in granting or refusing to grant the licence.... There being no principles or standards laid down in the Regulation there are obviously no restraints or limits within which the power of the Executive Committee to refuse to grant or renew a licence is to be exercised.... The power of refusal is thus left entirely unguided and untrammelled.
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> ...
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> A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable. Section 3 of the Regulation is one such provision and is therefore liable to be struck down as violative of Article 19(1)(g)."

The Supreme Court has clearly held that among the same group of employees, if there is any discrimination in the matter of service conditions then, it is clearly violative of Article 14 of the Constitution of India.

9. Though the learned counsel for the petitioner/ Corporation brought to the notice of the Court that the Corporation has now introduced a new medical insurance scheme (in tie up with Star Agencies) with effect from 3.10.2008 providing for medical reimbursement and also stated that the second respondent/Union has also agreed for the implementation of the scheme, this Court is not concerned with the future arrangement between the Corporation and its employees. The short question that arises for consideration is whether the impugned award of the Tribunal suffers from any infirmity or illegality. The Tribunal has correctly held that there was no justification for introduction of a cut off date in the matter of extension of health scheme. It must also be noted that the Courts have repeatedly emphasised the

right to health as a right flowing from Article 21 of the Constitution of India. Therefore, any interpretation of a scheme must have its basis based upon Article 21 of the Constitution of India. In the light of the above, there is no merit in the writ petition.

The writ petition stands dismissed. No costs. Consequently, WPMP No.7647 of 1999 is also dismissed.

kpl

Sd/-
Assistant Registrar

/ True Copy /

Sub. Assistant Registrar

To

The Presiding Officer
Industrial Tribunal
Chennai.

1 cc to Mr.S.Natarajan, Advocate, sr.4429
2 ccs to Mr.G.B.Saravana Bhavan, Advocate, SR.4285

msm (co)

dv/6.2.

W.P.No.5226 of 1999.