

(2000) 06 KAR CK 0064

Karnataka High Court

Case No: Writ Petition No. 16102 of 1999

Kannadapara Sanghatanegala
Okkuta and Kannadigara
Rakshana Vedike, Bangalore and
others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: June 20, 2000

Acts Referred:

- Constitution of India, 1950 - Article 299
- Railways Act, 1989 - Section 3

Citation: (2001) 3 KarLJ 378

Hon'ble Judges: Y. Bhaskar Rao, C.J; V. Gopala Gowda, J

Bench: Division Bench

Advocate: Sri B.T. Parthasarathy and Sri Sonnegowda, for the Appellant; Sri Ashok Haranahalli, Central Government Standing Counsel, Sri A.N.Venugopalagowda, Sri G. Papi Reddy, Government Advocate, Sri Jayakumar S.Patil, Sri Subhash B. Adi and M/s. Kesvy and Company, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This writ petition is filed as Public Interest Litigation by the petitioners comprising of certain registered associations, former M.Ps., M.L.As., former Mayor and Deputy Mayor and an individual seeking to quash the impugned order at Annexure-D, dated 12-4-1999 in which it is stated that the Central Government has decided to shift the headquarters of South-Western Railway from Bangalore to Hubli. Petitioners have also sought to restrain respondents 1 to 4 from shifting the aforesaid headquarters from Bangalore to Hubli and to direct respondents 1 to 3 to examine the feasibility and take steps to create additional Zonal Headquarters of the railways at Hubli in the lines of additional Zonal Headquarters created at Bilaspur.

2. In the writ petition the petitioners have elaborately stated the history of introduction of railways in India, the objectives to have a railway network throughout India, the railway lines laid in Karnataka, the importance of having Zonal Headquarters of Railways in the capital city of the State, the requirement of co-ordination of various departments of both Central and State Governments, the facts relating to various Committees constituted for the establishment of Zonal Headquarters, the acceptance of Tandon Committee Report, the amount allocated in the budget, the work in progress to create links between Bangalore and Bidar. Certain figures are also furnished. It is not necessary to refer to all those facts and figures mentioned in the writ petition.

3. The short point for consideration is, whether the shifting of headquarters of South-Western Railway from Bangalore to Hubli as communicated in the impugned letter at Annexure-D is legal, valid, necessary and justified? This has to be tested with the admitted facts and figures furnished in the statement of objections filed on behalf of the respondents 1 to 4 who have sought to justify the impugned communication.

4. The issue involved in this writ petition has to be considered in the background that earlier W.P. No. 32042 of 1996 was filed in this Hon"ble Court by some persons seeking a declaration that the decision to locate the Zonal Office at Bangalore is arbitrary and to restrain the respondents therein from proceeding further in the matter. The said writ petition was disposed of by this Court on 17-2-1998 holding that since notification regarding location of Zonal Office of South-Western Railways was not issued, the writ petition was premature. A direction was issued to the respondents to consider the objections filed in this regard in accordance with law. Thereafter, this writ petition is filed by several organisations and other dignitaries. Subsequently I.A. II was filed for impleading the applicants as respondents 6 to 11 and the same was allowed on 11-6-1999. However, the cause title was not amended.

5. In the meantime, I.A. III was also filed for impleading the Hubli Dharwad Municipal Corporation as respondent, The same is allowed and the Counsel for the petitioners shall amend the cause title. Another application LA. IV for impleading was filed by Mr. Subash B. Adi, learned Counsel for the applicants to implead as respondents 6 to 10. Since second set was not filed, the application was returned on 5-11-1999. The same was re-filed along with the second set on .7-1-2000. By that time even though the matter was reserved on 6-1-2000 itself, the application is allowed. Petitioners" Counsel is directed to amend the cause title and to file amended writ petition.

6. From the paper cuttings produced along with the writ petition, it is clear that there was a lot of hue and cry against the shifting of Railway Zonal Office from Bangalore to Hubli. In spite of such protests from various quarters, the impugned communication has emerged. We shall now proceed to examine to what extent it is justified.

7. In the statement of objections filed on behalf of respondents 1 to 4 the fact of establishing South-Western Railway Zone at Bangalore is stated to have been decided by the Railway Ministry. However, necessary notification was not issued in this regard as required u/s 3 of the Railways Act, 1989 (hereinafter referred to as "the Act"). It is stated that subsequently the Union Cabinet has decided on 28-2-1999 to establish the Zonal Office of South-Western Railways at Hubli after taking into consideration all aspects. In paragraph 7 of the counter the impugned action is sought to be justified in the following manner.-

"7. At Hubli the railways has got a Division Office of South Central Railway apart from the Central Workshop. The infrastructure required for establishing of the Zonal Headquarters is readily available in Hubli. There was a long standing demand from the people hailing from North Karnataka to establish the Zonal Office of the South-Western Railway at Hubli. The Members of Parliament from the North Karnataka region had repeatedly represented for establishing of the Zonal Office of South-Western Railway at Hubli. Taking all aspects into consideration, it was decided by the Union Cabinet on 28-2-1999 to establish the Zonal Office of South Western Railway at Hubli. The same is an administrative decision based on relevant materials, which cannot be subject-matter for consideration before this Hon"ble Court. Even, the former Chief Minister of Karnataka had requested that the demand for locating of the headquarters of South-Western Railway at Hubli be considered favourably".

In the light of the above reasons offered by the respondents in justification of the impugned action, it requires consideration as to whether the reasons could be accepted as valid and genuine?

8. At paragraph 11 of the same counter-statement, it is stated that pursuant to the earlier decision to locate the Zonal Office at Bangalore, a temporary office was established in Bangalore and the same was inaugurated on 1-11-1996. Though an expenditure of Rs. 1,120.46 lakhs was expected to be incurred upto March 1999, the actual expenditure was about 10.00 crores. A sum of Rs. 80.00 lakhs has been allotted in the Union Budget for 1999-2000. The office accommodation of 1,380 sq. mtrs. was constructed on the top of Divisional Railway Manager's Office Complex, 14 Type-V, 8 Type-IV, 46 Type-III, 20 Type-II and 24 Type-I quarters have been constructed. These facilities also being used by the Divisional Office at Bangalore and other railway establishments stationed at Bangalore. There is no wastage of any railway funds.

9. From the above, it is clear that a sum of ten crores had already been spent with the intention of establishing the Zonal Office at Bangalore. This expenditure had been incurred despite the fact that the notification as required u/s 3 of the Act was not issued. In the entire statement of objections it is not stated that at least now the requisite notification has been issued. So, the issuance of notification is still pending and without doing that ten crores of rupees have already been incurred on the

project. Added to that, a sum of Rs. 80 lakhs had been earmarked for 1999-2000. Having done all the efforts by spending such huge sums of public money, all along it is now decided to shift the Zonal Office to Hubli. Before taking such a decision, the public money spent on the project has been totally ignored and the same was not taken into consideration by the first respondent at the time of taking a decision contrary to the earlier decision. The public money cannot be permitted to be wasted in this manner by changing the decision which was already taken after consideration of all relevant and material factors for locating the zonal office at Bangalore which is the capital city of the State. There was no valid reason and changed circumstances existed for taking such a decision. Establishment of Zonal Office in the capital city would facilitate to have better co-ordination with various departments of both Central and State Governments for speedy implementation of the laudable objects of the railway for providing better transport system to the citizens of the country at cheaper rate. It also paves way for development of railway transportation throughout the State and different parts of the country.

10. The Court takes judicial note of the fact that the earlier decision to set up the Zonal Office at Bangalore was taken by the previous Government belonged to different political parties than the one which taken the subsequent decision for shifting the office to Hubli. The subsequent decision is vitiated on account of legal mala fides as, the first respondent without any changed or compelling circumstances has decided to shift the Zonal Office from Bangalore to Hubli contrary to the earlier decision which was taken after appreciation of all relevant and material factors and taking into consideration the necessity of establishing the Zonal Office in the capital city. That decision was also taken after consideration of the reports of various Committees constituted for the establishment of Zonal Offices.

11. It is important to observe that though the respondents have filed counter-statement justifying now the shifting of Railway Zonal Office to Hubli, in the statement of objections filed in the earlier W.P. No. 32042 of 1996, they have justified the decision to locate the Zonal Office at Bangalore, which has been extracted in the order passed in the said writ petition. The relevant portion of the same is to the following effect.-

". . . . The decision to set up a Zonal Office of South-Western Railway at Bangalore was taken after taking the approval of the Competent Authority. . . . As of now, an officer on special duty is functioning from the temporary office premises located in the Divisional Railway Manager's Office, Bangalore, with a core HQ office consisting of more than 15 officers and 55 staff members. It is incorrect and false that in a hurried manner the function was held on 1-11-1996. Inasmuch as the Cabinet had taken the decision to locate the HQ of South-Western Railway at Bangalore based on the recommendations of Railway Reforms Committee in 1984 and the Advisors Committee Report in 1994, the function for taking Steps towards the formation of

one was held on 1-11-1996, which was inaugurated by the Prime Minister of India".

(emphasis supplied)

The underlined portion from the above extract clearly demonstrates that respondents had sought to justify the decision to locate the Zonal Office at Bangalore. The decision was based on the recommendations of Railway Reforms Committee and the report of the Advisors Committee. But, in the counter filed in this writ petition they have taken altogether a different stand. The stand now taken is quite contrary to the stand taken in the earlier writ petition, This clearly shows that the respondents are acting according to the Governments in power from time to time. They are not entitled to do so and the first respondent cannot go back from the earlier decision merely because of some political pressure. Respondents also cannot take such conflicting stands. We do not give any credence to the counter filed on behalf of respondents.

12. The respondents are estopped from taking the stand which is taken now in the statement of objections. In this connection, the view taken by the Supreme Court in the case of [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others](#), is extracted below.-

"The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon; by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. . . . Where Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, however high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception".

The decision taken by the Union Government to establish the Zonal Office at Bangalore is a form of promise made to the citizens. The same Government cannot act contrary to the same. The principle of "Promissory Estoppel" would be attracted in the case and the Union Government has to implement its earlier decision. Even in the case of [Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.](#), the Supreme Court has held that promissory estoppel would estop from backing out of the obligation.

13. Political rivalry shall not come in the way of establishing the projects in a particular place. The decision to set up the Zonal Office at Bangalore was taken in the middle of 1996. In paragraph 2 of the counter filed on behalf of respondents 1 to 4 it is stated that a time frame of 60 months was planned for the formation and completion of establishing the Headquarters of new Zonal Railway Office. That time frame was over long ago. As on today the notification u/s 3 of the Act is not issued. That means, there is already delay even in the issuance of the requisite notification pursuant to the earlier decision. In the meantime, the decision is taken to shift the office from Bangalore to Hubli by the Government belonging to different political parties in power. This adds not only to the delay already occurred but makes the project more expensive on account of escalation of prices of materials and labour. These aspects have not been taken into consideration by the first respondent while taking the impugned decision. The earlier decision to locate the Zonal Office at Bangalore has been accepted, acted upon, enforced and brought into implementation by spending more than ten crores of rupees for the construction of the aforesaid infrastructure. Hence, there was no justification on the part of the respondents 1 to 4 in taking the present decision.

14. In paragraph 10 of the statement of objections the respondents sought to justify establishment of Zonal Office at Hubli as under.-

"Earlier, Bangalore was suggested as headquarter as it is the capital of the Karnataka State and would help in better co-ordination with State Government officials. Now, with the tremendous improvement in communication facilities and in the information technology, there would be no difficulty in establishing instant communication and easy co-ordination from Hubli to enable smooth functioning of Zonal Office once it is set up at Hubli".

It is no doubt true that modern communication facilities provide easy access to receive and give requisite information. Establishment of Zonal Office involves office accommodation, acquisition of private land for laying railway lines and the lands belonging to various departments of both Central and State Governments, such as forest department if the land belongs to Forest Department, Mines and Geology Department if the land belongs to it, Irrigation Department if railway line is to be erected over lakes, rivers etc., Public Works Department if bridges are to be erected and many more departments. The co-operation and co-ordination of all those departments are absolutely necessary for the effective implementation of the decision. In order to obtain the consent, co-operation and co-ordination of several departments, utilisation of modern communication systems like telephone, fax, e-mail etc., are not only costly in terms of tariff or charges but all discussions, deliberations and meetings cannot be conducted only through the use of these modern facilities. Officers at various levels have to sit together and have discussions face-to-face for better co-ordination and to solve the problems, differences and difficulties. Hence, availability of modern communication system alone cannot be

taken as the basic requirement for establishing a Zonal Office giving a go-by to all the amounts already spent and the infrastructure developed. Hence, the stand put forth by the respondents in this regard is wholly untenable and cannot be accepted. Since Bangalore is the capital city and majority of both State and Central Government offices are located in the city, it would be easy and cheaper to have contacts and meet them locally for the aforementioned purposes.

15. In paragraph 6 of the counter it is stated that the Union Cabinet took decision on 28-2-1999 to establish the headquarters of South-Western Railway at Hubli and thereafter the 4th respondent was informed to conduct preliminary survey and to send detailed report. It is to be noted that without conducting such preliminary survey and securing report, the decision would not have been taken by the earlier Government to establish the Zonal Office at Bangalore. Once such formalities had been completed and a decision was taken in the matter at the Cabinet level, there was no occasion to reconsider the same and take a contrary decision. It is to be noted that for the establishment of Zonal Offices several Committees had been constituted and finally the Tandon Committee Report was accepted and it was decided to have the Zonal Office at Bangalore. Such being the position, the respondents ought not to have ventured to shift the office from Bangalore to Hubli.

16. As regards the demand of North Karnataka people to establish Zonal Office at Hubli is concerned, it is no doubt true that while the North Karnataka people are desirous of having the Zonal Office at Hubli, at the same time, the people of South Karnataka are pressing for retention of the same at Bangalore. Already a decision had been taken in their favour by the earlier Government after consideration of all aspects of matter and partially the said decision had been implemented by spending more than 10 crores of rupees. The rival claim of people of two parts of the State cannot be the consideration in the matter. The primary consideration should be the decision which was taken at the earliest point of time after taking into consideration of various reports and the recommendations, the amount spent for implementing the said decision, the infrastructure put up, the budgetary allocation made for the project, the working of a temporary office at Bangalore since 1996, the arrangements made and the amount spent for the inauguration of the function by the Prime Minister and other aspects. As long as railway service is provided in the country linking all the States for the convenience of the people, the location of headquarters either at Bangalore or at Hubli makes no difference. Railways being a service oriented department, its prime object shall be to render better service to the people and both the Union Cabinet and the respondents should bear the same in mind. Any decision taken without objective assessment of these considerations will serve no purpose. At the same time, the hard earned public money should not be allowed to be spent wastefully by virtue of the decisions taken without any firmness in the matter.

17. It was not wise on the part of the Union of India to shift the Zonal Office from Bangalore to Hubli after a lapse of three years of taking the decision to locate the same at Bangalore, that too after spending crores of rupees and having implemented the decision by establishing temporary office at Bangalore and constructing quarters and putting up necessary infrastructure and also earmarking budgetary allocation for the project. The only thing required to be done is to issue the notification u/s 3 of the Act, That being the position, any deviation from the earlier decision would add to the delay already occurred in the matter and make the implementation of the decision more expensive. The people of this country are already over-burdened by the imposition of various taxes, cess, fees, charges etc., and the country has already indebted to several countries by borrowing various loans. Both the country and its people shall not be further burdened by making the implementation of decisions more expensive on account of escalation of prices and also deprive the utility of the projects at the earliest point of time.

18. One of the contentions taken in the objections statement by the respondents is that the decision impugned is an administrative decision and the same cannot be the subject matter for consideration of this Court. In other words, the contention is, judicial review is not permissible. This contention has no force and the same is liable to be rejected in the light of the decision of the Supreme Court in the case of [Tata Cellular Vs. Union of India](#), . The relevant paragraphs are extracted below.-

"86. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

93. The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?
2. committed an error of law;
3. committed a breach of the rules of natural justice;
4. reached a decision which no reasonable Tribunal would have reached; or
5. abused its powers.

94. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness, (iii) Procedural impropriety.

95. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v Secretary of State for the Home Department ex parte Brind*, Lord Diplock refers specifically to one development namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

19. Before concluding, we make it clear that we have not touched the allegations made in the writ petition. We have confined our reasonings to the merits of the case.

20. For the foregoing reasons, this writ petition is partly allowed and the impugned decision of the first respondent at Annexure-D is quashed. The first respondent is directed to issue necessary notification u/s 3 of the Act within a period of six weeks from the date of receipt of copy of this order as per the earlier decision to locate the Zonal Office of the railways at Bangalore.

21. For the reasons stated in paragraph 17 in the counter-statement filed on behalf of respondents 1 to 4, the direction sought for by the petitioners to the respondents 1 to 3 to examine the feasibility of creation of additional Zonal Office at Hubli cannot be issued. However, if the reasons assigned in paragraph 17 no longer exist and if there are favourable circumstances, possibility of locating additional Zonal Office may be considered and a decision may be taken by respondents 1 to 4 in that regard.

22. Petitioners shall file amended cause title of the writ petition within two weeks.