The Calcutta tramways Company (1978) Ltd. Vs Lakshman Chandra Jana and Another

Court: Calcutta High Court

Date of Decision: Aug. 30, 1991

Acts Referred: Constitution of India, 1950 â€" Article 37, 38, 39A

Citation: 96 CWN 1188

Hon'ble Judges: Ajoy Nath Ray, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Milan Bhattacharjee, for the Appellant; Pradip Ghose and Sahidullah Munshi, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Bhattacharjee, J.
Even few decodes back, we were told that (sic) courts existed to do justice, it could only do so accoefing to Law.

Justice used to fail, falter and stumble, unless escorted or conveyed by the provisions of law. The tandency of our modern Courts is, however,

different and they are now everready to go anywhere to promote or rescue Justice, unless any legal provision stands in and blocks the way. We

have now travelled a long distance from ""everything is prohibited unless dearly permitted"" to ""everything is permitted unless clearly prohibited"". In

the case at hand brother Ray, in upholding the decision of the learned trial judge has not waited for any set of legal provisions to substantiate his

Judgement, but has allowed the cause of Justice to triumph even without the aid of any express provisions of law. I agree with him and concur in

his Judgment. I also agree for yet another reason. I have, while speaking for Division Bench of this Court on a number of occasions, consistently,

clearly and categorically declared that since the Court, as pointed out by Mathew, J., in His Holiness Kesavananda Bharati Sripadagalvaru Vs.

State of Kerala, is mandated by our National Charter, (vide. Articles 37,38,39A etc. of the Constitution), to secure and promote Social and

Economic Justice and since Socio-Economic Justice, particularly in the present Indian context, would mean Justice to the weaker, the poorer, the

lower or the lowlier, a new juristic principle must inevitably be evolved to the effect that if two views are possible, whether of the facts or the laws,

the view in favour of the weaker, the poorer, the lower or the lowlier, is to be accepted, that our Constitutional resolve to secure and promote

Socio-Economic Justice is faithfully, fruitfully and effectively carried out. Reference may be made, among others, to the Division Bench decisions of

this Court in State Bank of India vs. Amal Kumar Sen (1988 Lab and Ind Cas 1585). Sudhangshu Mohan vs. life Insurance Corporation (92,

Calcutta Weekly Notes 1092) and in United Bank of India Vs. Rashyan Udyog and others, etc.,

2. I have no doubt that the view of Ray. J., in favour of a poor ex-tubercular patient and a retired employee, pitched in an unequal forensic combat

against the quondam employer, the State and/or the Calcutta Tramways Company, is perfectly reasonable, even if I assume arguendo that the

same may not be the only possible view. For the reasons stated above, I must accept that view and concur in the Order proposed by my learned

brother.

Ajoy Nath Ray, J.

3. I think the appeal should be dismissed and the order of the Hon''ble Mr. Justice Mahitosh Majumdar pappssed on 6th June. 1988 should be

upheld. I am of the opinion that the said order under appeal should be slightly clarified or modified in the manner indicated later, for the purpose of

letting parties know, with more certainty, where they stand.

4. The writ petitioner Lakshman Chandra Jana. the first respondent before us, was an employee of. either the predecessor of, or of, the first

appellant, who took over the undertaking of the Tramways in Calcutta. The writ petitioner joined service on the 18th April, 1944 and twenty six

years later, having contracted tuberculosis, retired on 261h December, 1970. He recovered and was re-employed on 14th December. 1971, the

Tramways treating this as a new service. In 1983, after having served over an extention period of 5 years, he finally retired at the age of sixty (60).

(Paper Book, Pages 3-6, 32-33).

5. The writ petitioner, by his letter dated 17th February, 1983 wanted to nominate his son as a future employee of the Tramways, i.e., respondent

no. 2 in the court below (page 20 of the paper book).

6. By a letter on 18th May, 1983 (paper book page 43) the writ petitioner was informed that the case of his son''s employment would be taken up

when the turn came according to the writ petitioner''s service seniority; the date of entry into service, would be taken, the letter said, as ""14.12.71

(second spell-new service)"".

7. There is no writing, but it is stated that the writ petitioner nominated his son, for employment in his place, as early as in 1970 when he fell ill (as

he says in the sixth paragraph of his petition at page 7 of the paper book). There is again no writing to show, but the appellants say (para 4(g) of

the opposition to the court below at page 32 of the paper book), that the writ petitioner''s application for the employment of his son as his nominee

was refused on 13.6.1977 on the basis that such system has been abolished. Yet, paragraph 4(m) (paper book, pages 33, 34) of the same

opposition (dated 25.1.1987) proceeds on the basis that the system of nomination still persists; that para reads as follows :-

4(m) Normally appointment of nominee is given on the basis of the seniority of the concerned existing employee Since the writ petitioner has joined

the serice on 14. 12.71 an chance of appointment of nominee of the employees who joined the service in the year 1971 has not as yet come.

8. The real questions, which emerge from the totality of pleadings and annexures in this appeal, therefore, are, whether the nomination would at all

be considered by the second respondent, and if so, whether on the basis of the writ petitioner''s seniority of service for his second span of new re-

employment, or whether it would be considered on the basis of the joining date for the first service period. It is not however; disputed on the part

of the writ petitioner that between his new service and the previous, there would be no connection, as his terms of second employment show (letter

dated 4.12.1971 at page 38 of the paper book). The written terms are silent as to nomination.

9. That a retiring employee like the writ petitioner has a right of nomination is not really disputed on the behalf of the appellants. Apart from the said

paragraph 4(m), the letter of 18.5.1983 also assumes that the writ petitioner''s nomination would be taken up when his turn came, on basis of his

entering service on 14.12.71.

10. The learned judge in the court below also examined the service records of three (3) other employees named in the thirteenth (13th) paragraph

of the writ petition. It is not in dispute that a nominee of one Dhirendra Nath Das was appointed on 5th. September, 1980 on the bssis of

continuity of service being accorded to the nominee in spite of a broken service record like the writ petitioner''s. One Bansidhar Nayak''s son was

also appointed on 16.5.1981. So it cannot be said that the system of nomination ever was discontinued altogether.

11. The above position of these three other employees is really clarified by the appellant''s replying affidavit to the opposition filed in the appeal

court stay application. That is not a part of the records in the court below (naturally), nor does that form a true part of appellate papers though they

are included In the paper book. The relevant part of the Tramway''s reply is as follows :- (pages 97 to 100 of the paper book) :-

5. I say that-

(a) Nitya Ranjan Dnar entered service on 4.12.56, retired on medical ground on 14.10.76 and was re-engaged on 9.10.77 on the basis of order

of the Home (Transport) department because of consideration of, victimisation between 1972 and 1977. No nominee has been. appointed.

(b) Sri Dhirendra Nath Das entered service on 12.8.43 retired on medic ground on 6.7.66 applied for employment on 26. 12. 66 within six

months and was re-engaged on 2.9.67 without continuity of service. He filed a suit and his case was reviewed and was given continuity of service

by order dated "26.6.79 (sic) settlement of retirement dues and promotion concerned. His son was appointed on 5.9.80. His case was reviewed

because be applied within 6 months from date of retirement but he was not appointed because of absence of vacancy and it was subsequently

rectified on review, he was found fit to join service within 6 months from date of medical retirement.

(c) Sri Bansidhar Nayak entered service on 18.4.44 and retired on medical ground on 12.7.7 and re-engaged 7.7.81 without continuity of service

but his son was appointed on 16.5.81 before his reengage-ment taking his service counted from 18.4.44.

12. The respondents to the writ have also admitted in the court below in the sixth (6th) paragraph of their opposition (paper book page 34) that

each and every case of a nominee has been considered individually on its own merit. No rules (sic) applicable to the case of the writ petitioner

could be brought to our notice. Under these circumstances, I find no reason to interfere with the learned judge"s decision directing the respondents

in the writ matter to make available to the writ petitioner the same benefits as were made available to the other employees, whose cases were

considered by the learned judge; two of these employees successfully had their nominees admitted (Bansidhar Nayak and Dhirendra Nath Das). I

have not thought fit again to examine the records of the other employee named Nitya Ranjan Dhar as disputes were raised about any nominee at all

being appointed on his nomination. Thus far for the system of nomination at all existing in the Tramways Organization.

13. If the case of the writ petitioner is to be considered on merits, then the same has clearly not been done expressly in theletter of 18th May,"

1983, which simply states that the writ petitioner"s nomination is to be treated as the nomination on the basis of his second service spell. I think, the

learned judge in the court below has correctly given direction to the contrary.; the nominations of both Dhirendra Nath Das and Bansidhar Nayak

being considered on the basis of the initial joining dates in spite of break in service (like the writ. petitioner"s), the direction to the appellants to treat

the writ petitioner on the same footing would clearly mean that his nomination would also have to be processed on the basis of his first joining date

or first service spell.

14. The writ petitioner''s service record is unblemished. I find no reason why his nominee son should not be put at par with the nominee of any

other employee who joined service in the early forties (''43 or ''44) and who have thereafter retired.

15. The man Lakshman Chandra Jana is the same man, whether he served under one spell or two. His nomination is his nomination and nobody

has gone so far as to suggest that he could nominate twice for his two service spells. There is no reason why his nomination shouldn''t be viewed

from the stand-'' point of that service spell which is the more favourable to him. As I have said before, there is some indication that even in the

seventies he tried to nominate and himself go out, but without success, for no fault of his own. then came the extension, the final retirement, and the

nomination.

16. I must frankly state the working of my own mind and say why I have found in favour of the respondent Lakshman Chandra Jana. I think, of

course, agreeing with the learned judge in the court below, that such a nominee being allowed to join service at least to one other similar case

which has surfaced, (that of Dhirendra Nath Das), there is no reason why it should not also be allowed to the first respondent (writ petitioner). But

another reason appeals to me also. It must be remembered that this system of nomination is not a modem system. It was in the time when the

service of the father would be taken as an important factor in allowing the son to do the same job. The modern age has too much competition for

such a principle to have any very broad application any longer. It is not for me in my judicial capacity either to hold in favour of the acceptance of

the established personal relationships or family relationships or to decry them. But, I think, it is within my judicial power, and also part of my

judicial duty, to enforce consistency about a particular principle or system, which is in fact being followed. I mean if no system of nomination

prevails with the Tramways at all. perhaps, I cannot as a judge introduce it in the Tramways Company against their own administrative policies. But

if the system of nomination is there, I can act on the basis of this, that the system is a recognition of a family trait of faithful continuous service. If

that be so. I fail to see why the service of Lakshman Chandra Jana should be reduced in value from the stand-point of faithfulness in so far as his

sons position as nominee in the Tramways company is concerned. This is why it is not illogical that Lakshman Chandra Jana''s service should be of

one particular length for the purposes of nomination and of another (second) shorter length for other purposes. These other purposes of personal

service call for a truncated treatment of the service spells, as Lakshman Chandra Jana was reappointed like a newcomer. Such a cut off in service

cannot be avoided even if Lakshman Chandra Jana contracted tuberculosos for no fault of his own. Public service is public service. But then, when

the system of nomination prevails, I can well relieve Lakshman Chandra Jana of the incidence of his unfortunate illness so far as his son''s

nomination is concerned, I have no hesitation in doing so.

17. In the result, the appeal is substantially dismissed, with this further Clarification that the appellants will process the nomination of the writ

petitioner''s son giving the writ petitioner the full benefit of that service of his, which, for purpose of nomination only, shall be treated as commended

from 18th April. 1944. Apaprt from the above clarification, I would affirm the order under appeal and dismiss the appeal will costs assessed at

150 gms.

Ajoy Nath Ray, J.

I agree.