

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9189 OF 2015

Furquan Akram S/o Gulam Irfani,
Age : 31 Years, Occu. : Unemployed,
R/o : Plot No. 20, Sadaf Colony,
Katkot Gate, Aurangabad,
Tq. & Dist. Aurangabad.

.. Petitioner

Versus

1. The Union of India,
Through Secretary,
Minister for Railways,

2. General Manager,
South Central Zone,
Rail Nilayam,
Secundarabad.

3. Chief Commercial Manager,
South Central Zone
Rail Nilayam,
Secundarabad.

4. Senior Divisional Commercial
Manager, South Central Zone,
Nanded Division,
Nanded.

.. Respondents

Shri G. R. Syed, Advocate for the Petitioner.

Shri S. B. Deshpande, Asstt. Solicitor General for the
Respondent Nos. 1 to 4.

**CORAM : S. V. GANGAPURWALA
K. L. WADANE, JJ.**

DATE : 21ST SEPTEMBER, 2016.

JUDGMENT (*Per Sanjay V. Gangapurwala, J.*) :-

. Rule. Rule returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner assails the condition in advertisement dated 11.08.2015, whereby applications are invited only from the retired employees of South-Central Railway aged upto 65 years for appointment as facilitator to help passengers having smart cards for getting tickets and to issue unreserved tickets through Automatic Ticket Vending Machine (for short 'ATVMs') at seventeen railway stations over Nanded Division. The said allotment of work was valid upto 30th September 2016 and on performance being satisfactory the same could be extended upto 31.03.2017.

3. Mr. Syed, the learned counsel for the petitioner submits that, the petitioner is an educated unemployed. The petitioner had applied for grant of tender as Jan-Sadharan Ticket Booking Sevak (for short 'JTBS') and by agreement dated 28.04.2009, the petitioner was permitted to run the JTBS. The agreement was initially for three years and same was continued. However, unfortunately, since 15.11.2015 because of the under construction work of the roads at Swastik Square the lease line provided by the Bharat Sanchar Nigam Limited (for short "BSNL") is not

workable and since then JTBS is inoperative. The petitioner is rendered jobless.

4. The learned counsel submits that, the advertisement dated 18.08.2015 inviting applications only from retired railway employees of South-Central railway to operate the ATVMs and to issue unreserved railway ticket is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The learned counsel relies on the judgment of the Apex Court in the case of Reliance Energy Limited and another Vs. Maharashtra State Road Development Corporation Ltd. and others reported in 2007(6) Bom.C.R. (S.C.) 677. The learned counsel submits that, the said condition of the retired employee of South-Central Railway only being eligible to apply is unreasonable, arbitrary and does not have rational nexus with the object to be achieved.

5. Mr. Deshpande, the learned Assistant Solicitor General submits that, the petitioner was also given offer for extension of the agreement of JTBS as per letter dated 29.05.2015, however, the petitioner has not renewed the same. The petitioner himself has given representation that, he is not in a position to apply for the renewal of the contract of JTBS. The learned A. S. G. submits that, the appointment of retired railway employees to operate ATVMs, so also facilitator for issuing unreserved tickets of ATVMs was under consideration and as per Commercial

Circular No. 60/2011, it was decided to grant sanction for appointment of retired/serving railway employees as facilitator of Central and Western railway subject to certain conditions. As such, appointments were in addition to JTBS. The policy of appointing retired railway employees to operate ATVM's is not discriminatory. The same is being implemented since 2011 and is in addition to other existing schemes. The retired railway employees form a class amongst themselves and cannot be equated with the petitioner. The smart cards can be operated by the passengers also. It is not necessary to approach the facilitator. It is only in those cases where a person is illiterate or for some reason is not in a position to operate said smart cards, the facilitator helps him in that regard and 5% bonus that would go to the passenger in normal course goes to the facilitator. Efforts are made to make the ATVMs more popular. The learned A. S. G. submits that, it is not a case of discrimination, as such the petition be dismissed.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. In our country, where large chunk of population is illiterate, so also large number of rail passengers are illiterate or semi-literate, these passengers do not know how to use ATVM. Many educated passengers are already using the ATVM on duly procuring the smart cards. With a view to popularize ATVMs, a

proposal was given from Central and Western railways for appointment of retired railway employees as facilitators. The said proposal was considered by the Government of India, Ministry of Railways and it was decided to grant sanction for appointment of retired/serving railway employees as facilitators. The said scheme of engaging facilitator was approved as a hand holding measure for a temporary period subject to various conditions. The same are spelt out in Commercial Circular No. 60 of 2011 dated 23.11.2011. Some of the relevant conditions are enumerated below :

a) The facilitators should be retired/serving employees preferably below the age of 62 years.

. It may, however, be ensured that the serving Railway employees perform this activity only during holidays or after office hours. In no case, they may be allowed to work during office hours and even during lunch time. If any serving employee is found to perform the activity of facilitator during working hours, he should be taken up under D & A Rule.

. A record indicating details of the cards being issued to serving employees acting as facilitator should be kept and in case of any complaint, it can be used to

check whether the card has been used during office hours.

- b) The facilitator should invariably wear and display an identity card and name badge.
- c) The facilitator should also facilitate issue of ticket by the user/passenger (holding Smart Card) from the ATVM. Adequate education to the user/passenger should be provided by the facilitator.
- d) Frequent inspections should be conducted by the Commercial Inspectors/Chief Booking Supervisors of the station and record of such inspections should be maintained.
- e) In case subletting or proxy attendance is detected at any time, the permission should be cancelled immediately.
- f) There should be no provision of furniture on the stations premises under the scheme so as to prevent congestion.
- g) Coupon Validating Machines (CVMs)

which are stand-alone machine and not integrated with the Unreserved Ticketing System of CRIS, should be phased out by 31st March, 2012 to popularize ATVMs.

(ii) It has also been decided that the validity of Smart Card for issuing tickets through ATVMs should be increased from the existing six months to one year.

(iii) It has also been decided that, the minimum top-up charge on Smart Cards for issuing tickets through ATVMs should be reduced from Rs. 50/- to Rs. 20/-.

8. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The Court can not strike down a policy decision taken by the Government, merely, because it feels that another decision would have been more logical or

wiser. It is not the domain of the Courts to embark upon an inquiry as to whether a particular policy is acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is irrational, arbitrary, unreasonable and thereby offend Article 14 of the Constitution of India.

9. The advertisement under challenge invites applications only from retired employees of all departments of South-Central Railway having less than 65 years of age and the said retired employee should have retired in normal course on superannuation or voluntary retirement. The employees who have been dismissed, removed or compulsorily retired under discipline and appeal rules are not eligible to apply. So also employees who had history of embezzlement of railway cash, who were involved in fraud and who are having record of misbehavior are also not eligible to apply. These facilitators are also required to apprise the passengers with the procedure of using ATVMs. The nature of the job of facilitator is spelt out in advertisement itself, which reads as under :

2. NATURE OF THE JOB OF FACILITATOR

Large number of Rail passengers are illiterate or semi-literate. They do not know how to use an ATVM. When such passengers come to ATVM to buy a ticket, the facilitator will issue them a ticket duly collecting exact fare and explain them the

procedure of using ATVM. During peak hours, the facilitators will form a queue of such passengers for orderly dispensing of tickets. Many educated passengers are already using the ATVM duly procuring the smart cards, when such passengers approach the ATVM, the facilitator will give them priority and allow them to generate their own ATVM tickets. Such passengers should not be insisted to come in the queue.

As soon as the ticket roll is finished in the ATVM, the facilitator will inform the BSR or Booking Clerk to insert a new roll. The facilitator should also inform the BSR/BC in case of malfunctioning of ATVM. He would ensure that the ATVM is not damaged by miscreants while he is manning the ATVM. The facilitator will always wear the identity card in a visible manner. He will not keep any furniture, chair, table etc., near the ATVM."

10. One of the condition in advertisement is also that the retired employee has to himself work as facilitator and he cannot delegate/sublet this to any other person.

11. For the ticket dispensing through ATVM, 5% bonus amount is allotted on the smart card. The passenger who himself uses the smart card, gets 5% bonus. In case, the passenger approach the facilitator for dispensing the ticket through ATVM, then the facilitator is eligible to retain this 5% bonus. Other than this, no other emolument or incentive is paid to the facilitator.

12. The contention of the petitioner that, the impugned tender

inviting offers from retired employees of railways only is violative of Article 14 of the Constitution of India cannot be accepted in the facts of the present case.

13. The guarantee of equal protection of law and equality before law does not prohibit reasonable classification. The State or the authority has the power to have classification on the basis of rational distinctions relevant to the particular subject to be dealt with. Of course, such permissible classification must satisfy two conditions namely the classification must be founded on intelligible differentia which distinguishes persons that are grouped from others who are left out of the groups and the differentia must have a rational relation to the object sought to be achieved by the policy. Conferment of special benefit or right to a particular group of citizens for rational reason is envisaged under Article 14 of the Constitution of India and is implied in the concept of equality.

14. The Government of India through Ministry of Railways has taken a conscious decision to appoint retired employees of the railways for dispensing tickets through ATVM. The same was on the basis of the proposal received by it from the Railway Department. The scheme has been evolved by the Ministry of Railways for appointment of their retired employees as facilitators, who are having knowledge of working of the railways, issuance of tickets, operation of ATVMs. These employees would

form a class amongst themselves. The said policy evolved by the Government of India is under its executive authority. There is no legislation governing the field. In view of that, the Government is entitled to evolve particular policy commensurate with the function and object that has to be achieved. So also carve out class of persons to sub serve the object. In the present case, to popularize ATVM and to facilitate illiterate or semi-literate passengers who do not know operation of ATVM to operate.

15. In view of the above, it cannot be said that, the said policy is arbitrary or violative of Article 14 of the Constitution of India.

16. The writ petition is dismissed. Rule discharged. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]