

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No.1589 OF 2018

JUDGMENT: (ORAL) (Per Hon'ble The Chief Justice Sri Thottathil B. Radhakrishnan)

When this matter came up for admission, we minuted an order on 19.12.2018 to the following effect:

“Different Original Applications filed for compensation for death or bodily injuries, from the Railways from 2009 to 2016 were classified and listed by the Tribunal in an effort to give efficacious remedy, including by way of settlement of disputes. The statement of objects and reasons for making the Railway Claims Tribunal Act, 1987, and the purpose for which the Tribunal is constituted would necessarily show that the Tribunal had gone in the correct direction to make an effort in ending those applications for compensation in the requisite manner. Those cases were identified in early November, 2016, and the railway administration was apprised **“to help the Tribunal”** to enter into settlement of expeditious disposal. The Tribunal was seeking the help of the Railways. The aim was to ensure that the claims get settled. The settlements did not take place. Hence, the matters were brought up for hearing. The learned Tribunal took effort to classify and identify different situations, which could be bunched up for fair and due application of mind by it. Delineating seven such groups, the Railways were given opportunity of hearing. That led to the order of the Tribunal rendered on 10.03.2017 classifying different matters and giving specific

directions, which are clear and applicable to the different situations, as are enumerated in different sub-paragraphs of paragraph 3 of that order. Paragraphs 4 to 10 of that order deal with individual cases, which could not have been put in the group classified matters, which were dealt with in paragraph 3 of the Tribunal's order.

2. We are constrained to say that the Railways did not consider that situation as the one where large number of claims could be settled one way or the other by duly following the directions of the Tribunal. Instead, they stood on technicalities of rules and procedure and the Tribunal's power and came to this Court invoking writ jurisdiction. The learned Single Judge found that statutory appeals are provided against the Awards of the Tribunal and therefore, the Writ Petition does not deserve to be entertained. Hence, the Railways are in appeal.

3. Hearing the learned counsel for the appellant, we think that the action taken by the learned Single Judge on the Writ Petition was itself unnecessary, because the learned Single Judge could have also gone into the modality of the Tribunal's action and, is satisfied by that, could have confirmed such course. That would have excluded even statutory appeals being filed by the Tribunal. We make this pointed observation because we have studied the entire order of the Tribunal and we do not see why the establishment of the Railways is fighting shy to give effect to those directions.

4. The socialist concept of this democracy is also laced with effective restitutionary mechanisms, which are intended to wipe the tears of the citizens, who suffer in such situations. The avowed object of

constituting the Tribunal was apparently in the Tribunal's mind, when it took recourse to the herculean task, which it undertook through the order issued on 10.03.2017 and the procedure adopted by it in reaching at that level of adjudication.

5. The history of this land would show that notwithstanding the fact that the Railways come into the Union List, it is always treated as forerunner in linking the Nation and her people. The fact that the Railways came into being during sometime, which could be referred to as part of our past, including the period of colonial control, the feudal mindset cannot run with the administrators, who are involved in carrying forward this Nation and in different situations of the avowed future, which is a guarantee of the Constitution to the people.

6. We are of the firm view that the Railways are bound to obey the command of the Tribunal issued through the order, dated 10.03.2017 and have; either not understood the contents of that order, or not inclined to effectuate that order. We want it to be clarified to us as to whether it is lack of understanding of that order which holds back the Railways from carrying forward the directions of the Tribunal or whether they have any practical problem in effectuating the directions of the Tribunal.

7. We therefore, direct the Deputy Chief Commercial Manager Claims/Head Quarters, South Central Railway, Secunderabad, who has sworn to the affidavit of the Writ Petition, from which this Writ Appeal arises, to be personally present before this Court and explain to us the problems, if any, that the Railways face in giving effect to the order of the Tribunal”

2. The Railways is in appeal against the judgment of the learned single Judge refusing to interfere with a decision of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad (hereinafter referred to as 'Tribunal'), and relegating the Railways to the statutory appellate remedy under the provisions of the Railway Claims Tribunal Act, 1987 (for short 'RCT Act').

3. The learned counsel for the Railways argued that the procedure adopted by the learned Tribunal is erroneous in law to such extent that it would result in erroneous exercise of jurisdiction. The plea is that by clubbing the different applications of different applicants in relation to different railway accidents or untoward incidents, there is really no trial on the basis of evidence or materials on a case to case basis. Pursuant to the order minuted by us on 19.12.2018, Sri M.G. Shekaran, Principal Chief Commercial Manager, South Central Railways, is present. To our query, he says that apart from the grounds raised by the Railways, the practical difficulty for the Railways is that on a case to case basis, the identity of legal representatives of the deceased persons as well as the dependency quotient are matters which have not been adjudicated and decided by the Tribunal. He, therefore, says that the impugned order of the Tribunal cannot be worked out by the Railways.

4. Buttressing her arguments, in support of the writ appeal, the learned counsel for the Railways contended that since the matter is one relating to breach of procedure by the Tribunal and thereby relatable to the question of jurisdiction, writ applications under Article 226 or under

Article 227 of the Constitution of India were eligible to be entertained and the learned single Judge was not justified in refusing to entertain the writ petition on the ground of alternate statutory remedy is available to the Railways in terms of the RCT Act. Reference is made by the learned counsel for the Railways to the decisions of the Apex Court in **Syed Yakoob v. K.S. Radha Krishnan**¹, **Union of India v. Rina Devi**², **Harbanslal Sahnial v. Indian Oil Corporation Limited**³, **T.C. Basappa v. T. Nagappa**⁴, **Hari Vishnu Kamath v. Syed Ahmad Ishaque**⁵. Relying on such precedents, it is argued on behalf of the Railways that notwithstanding the availability of a statutory remedy, this is an abundantly fit case where the writ jurisdiction ought to have been permitted to be invoked and remedy through writ jurisdiction ought to have been extended to the Railways.

5. Reverting to the order dated 10.03.2017 issued by the Tribunal which is impugned before the learned single Judge, we see from the first paragraph thereof that the learned Tribunal had undertaken the process of identifying seven (7) categories of matters which cannot be treated in a summary manner. This is how we understand the contents of the first paragraph of the Tribunal's order. The last sentence of the first paragraph of that order proceeds to say that those cases have been segregated for case to case disposal after full-fledged arguments. The second paragraph of the Tribunal's order reads as follows:

¹ AIR 1964 SC 477

² AIR 2018 SC 2362

³ AIR 2003 SC 2120

⁴ AIR 1954 SC 440

⁵ AIR 1955 SC 233

“2) That leaves us with the above list where there is no dispute either as regards the status of applicants as passengers or the death or injury resulting from untoward incidents. The cases where identity, either as regards the victim or the claimants’ relationship to the deceased are in doubt having also been segregated, all the applicants’ causes where deaths have resulted shall be taken as undisputed cases of persons as having established their status as dependents and their entitlement to compensations.”

A reading of paragraph Nos.1 and 2 of the Tribunal’s order clearly indicates that the Tribunal had proceeded only by considering those cases, which did not fall within the seven (7) categories classified and excluded from consideration by the Tribunal, as is discernible from the first paragraph of the Tribunal’s judgment.

6. Be that as it may, the learned counsel for the Railways argued that in sum and substance, the classification and the directions issued through the third paragraph of the Tribunal’s order, is essentially one, which also takes within its fold all such matters which are shown to have been classified and excluded through what is stated in the first paragraph of the Tribunal’s order.

7. Taking the aforesaid averments into consideration and also not ignoring the plea on behalf of the Railways that the identity of the legal representatives and the dependency on case to case basis are not available in the judgment for working out the directions, we are of the view that the learned single Judge was abundantly justified in holding

that this is a matter, which requires adjudication on mixed questions of facts and law even in appropriate appellate jurisdiction.

8. Therefore, the impugned judgment of the Tribunal was rightly not faulted by the learned single Judge solely on a jurisdictional issue or procedural issue. This means that the Railways will have the alternate appellate remedy in terms of the provisions of the RCT Act where the appellate Tribunal's jurisdiction will be co-extensive with that of the Tribunal and hence the appellate jurisdiction will provide a comprehensive consideration for all questions as between the Railways and the claimants.

9. As noted by us in the previous order, as also discernible from the objects and reasons of the RCT Act, the primary intention of that RCT Act is to expedite the settlement of compensation claims and to avoid protracted litigations in Courts. This would obviously be in the public interest of the Railway administration which is of national importance; as well as of the claimants, who happen to be either victims on account of death or bodily injury, or those entitled to compensation for loss of property. The surge of legislation wisdom in making the RCT Act is abundantly clear; that expeditious consideration has to be done. Therefore, we are sure that all matters in which the Railways have objections to the impugned order of the Tribunal can be considered by the Appellate Tribunal, if such appeal/s is/are placed by the Railways before it as enjoined by law.

10. For the aforesaid reasons, we do not find any reason to interfere with the decision of the learned single Judge. Hence, the writ appeal fails.

11. In the result, the Writ Appeal is dismissed. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the writ appeal stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

December 21, 2018.
PV

