



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.11.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P. (MD) No. 8130 of 2019

and

W.M.P. (MD) Nos. 6399, 6400 and 12849 of 2019

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1.K.Muniyandi,
S/o Kumarasamy,
Head Constable, SR8700677,
Railway Protection Force,
Trichirapalli Junction Post,
Trichirapalli, and
Divisional Secretary of Trichirapalli Railway Division,
and All India Vide President of Railway Protection Force
Association.

2.S.Manivannan,
Assistant Sub-Inspector,
Railway Protection Force,
O/o the Inspector of Railway Protection
Force, (Colony),
Golden Rock, Trichirapalli,
and
Divisional President of
Trichirapalli Railway Division of
All India Railway Protection Force
Association. ... Petitioners

Vs.

- 1.The Director General,
Railway Protection Force,
Railway Board, Rail Bhavan,
New Delhi-110001.
- 2.The Joint Director,
Railway Protection Force,
Railway Board,
Rail Bhavan,
New Delhi-110001.
- 3.The Deputy Inspector General,
Railway Board,
Rail Bhavan,
New Delhi-11001.

4.The General Manager,

<https://hcservices.ecourts.gov.in/hcservices/>



O/o The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

5.The Principal Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moor Market Complex, 6th Floor,
Chennai-600 003.

6.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Trichirapalli-1.

7.The Inspector,
Railway Protection Force,
Trichirapalli Junction Post,
Trichirapalli.

8.The Inspector,
Railway Protection Force (Colony),
Golden Rock, Trichirapalli

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter No.2010/Sec(spl)/6/1 dated 08.01.2019 issued by the Deputy Inspector General Railway Board the 3rd Respondent herein and the impugned letter No. X/80/AIRPFA/SR dated 9.1.2019 issued by the Principal Chief Security Commissioner 5th Respondent herein and the impugned letter No. SXT/P.420/AIRPFA/2016 dated 25.02.2019 issued by the Divisional Security Commissioner, Trichy, the 6th respondent herein and to quash the same as unreasonable, illegal, arbitrary and against the terms and conditions contained in the letter of recognition dated 11.08.1999 issued by the first respondent herein with approval of the Central Government and to consequently direct the respondents to permit petitioners to function as the office bearers are elected in the respective General Body Meeting as per bye-laws of 2010 of the all India RPF Association.

For Petitioner :Mr.Y.Krishnan

For Respondents : Mr.S.Manohar
Special Counsel

**ORDER**

Mr.Y.Krishnan, learned Counsel on record for writ petitioner and Mr.S.Manohar, learned Special Counsel for Railways on behalf of all eight respondents are before this Court.

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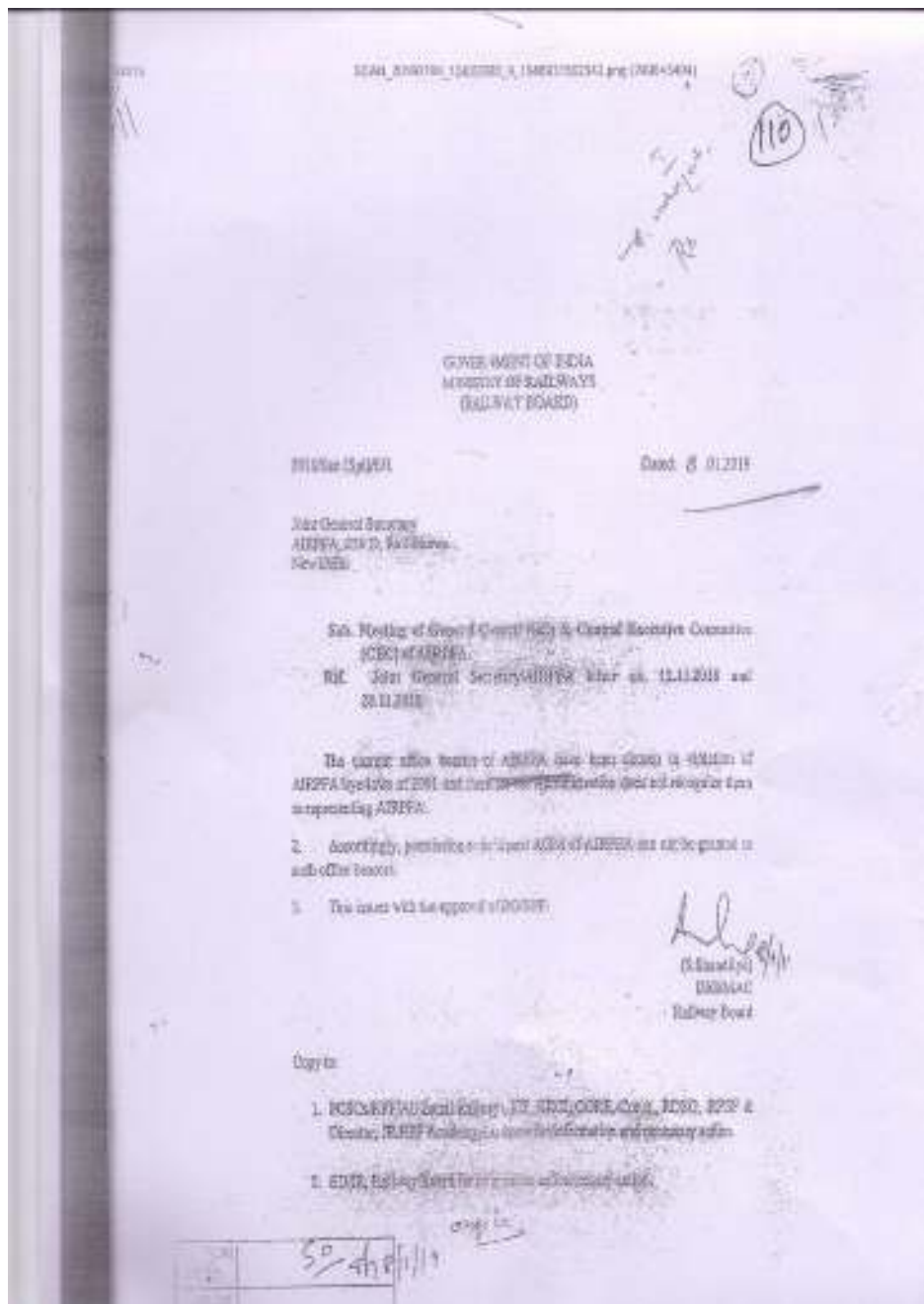
2. With consent of learned Counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Nucleus of this writ petition is an association which goes by the name 'All India Railway Protection Force Association' ('AIRPFA' for brevity and convenience). Undisputed facts are that AIRPFA is a registered Society under Societies Registration Act 1860; that the Registration number is 34924/1999; that the date of registration is 28.05.1999; that post registration Railways (to be noted all the respondents are being collectively referred to as 'Railways' for the sake of brevity and convenience) recognized AIRPFA on 11.08.1999; that such recognition of AIRPFA is under Section 15-A(1) of 'The Railway Protection Force Act, 1957 (23 of 1957)' and Rule 115 of the 'The Railway Protection Rules, 1987' (hereinafter to be referred to as 'said Act' and 'said Rules' respectively for brevity and convenience); that grant of recognition which is described as 'sanction' in the Rule ie., Rule 115 is sanction within the meaning of Section 15-A(1) of the said Act which deals with restrictions in respect of right to form association etc., ; that said Act is of the year 1957, but Section 15-A was inserted in the said Act in 1985; that such sanction was granted to AIRPFA on 11.08.1999 by Railways; that the sanction dated 11.08.1999 adumbrates as many as 26 conditions; that the conditions *inter alia* mention that the list of members, office bearers and changes in the same, either by election or co-option shall be communicated to Railways; that in 2018 (to be precise 12.11.2018 and 28.11.2018) when communication was sent to railways regarding office bearers of AIRPFA, Railways refused to recognise the office bearers on the sole ground that they have been chosen in violation of AIRPFA bye-laws of the year 2001; that this refusal communication dated 08.01.2019 sent by the third respondent bears reference 2010/Sec(Spl)/6/1; that consequent to this, fifth respondent sent a communication dated 09.01.2019, bearing reference X/80/AIRPFA/SR on the same lines and it was followed by an order passed by the sixth respondent dated 25.02.2019 bearing reference No.SXT/P.420/AIRPFA/2016; that instant writ petition has been filed assailing these three orders which hereinafter shall be referred to as first impugned order, second impugned order and third impugned order besides being referred to as 'impugned orders' collectively for the sake of convenience and clarity.

4. The first, second and third impugned orders passed by respondents 3, 5 and 6 respectively read as follows:



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Courier, Railway

Office of the
PCSC/PCF/MAS

Date: 09.01.18

X000AIRPFA/SR

DR/MAS, T.P., MDU, TVC, PGT & SA

Subj: Violation of AIRPFA bye-laws by name & office
bearing of AIRPFA.

Ref: Ref/Secy Board U.No.2010/Sec/Spl/511 dated
06.01.2018.

Enclosure is drawn on the copy of the Board's letter enclosed.

The Security Directorate does not recognize the current office bearing as
representing AIRPFA, due to violation of AIRPFA bye-laws of 2001.

For information & necessary action please.

Yours Obedt

(Santosh N. Chandraiah)
Dy. Chief Security Commissioner SR
For Principal Chief Security Commissioner.

Copy to:

Secy. to CMISR & ICF
PCPO/Genl., Labour, Admin, Rules/SR & PCSC/ICF
Sr.DS/MAS & DSG/TPS, MDU, TVC, PGT & SA
Principal/IC/KS/TPJ
ASCSIB (Protn): CIB & PS
All Ch OS/PCSC/MAS
✓ GSAIRPFA/SR

for information &
necessary action.



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SOUTHERN RAILWAY

No. SRT/420/MPT/4/2019

Office of the
Director,
DCC, SR
Date: 21.02.2019

PETTA GOV.

Sub: Violation of ASRP Regulations by certain advertisements of ASRP.

Ref: ASRP/77/2015 dated 26.09.2015/ASRP/50/2019 dated 21.02.2019.

As per the P.C.M. (P.T.M.) dated 21.02.2019, it is observed that the authority concerned does not recognize the earlier certificate as representative of ASRP. The only valid certificate issued to members of the following clubs is as follows: Details of ASRP Advertisements issued to members of the following clubs is as follows:

To: Members of the following clubs:

Sr.	Name	Official Capacity	Design	DOB	Age
1	S. M. NIVARAN	Dist. President	ASRP/50/2019	11.07.77	First Class
2	S. M. NIVARAN	Dist. Secy	ASRP/50/2019	11.07.79	First Class

It is observed that the above mentioned certificates are not valid as per the ASRP regulations. It is requested that the same be cancelled and the members of the above mentioned clubs be debarred from the ASRP facilities.



5. Instant writ petition has been filed by two individuals and according to the writ petitioners, they have been elected as office bearers of AIRPFA and the same has not been recognized by Railways vide impugned orders. Though very many grounds have been raised in the affidavit filed in support of this writ petition (hereinafter 'writ affidavit' for brevity), though very many contentions have been canvassed, this Court is of the considered view that one submission/contention will suffice for disposal of instant writ petition.

6. That one submission is impugned orders do not mention about which bye-law has been contravened. It is submitted that the impugned orders do not only not mention the specific bye-law which is said to have been contravened, but it does not even broadly set out the contravention so that one can trace the same to relevant bye-laws.

7. The three impugned orders have been scanned and reproduced supra in this order. A perusal of the three impugned orders reveal that there can be no dispute or disagreement qua this submission, in other words, there can be no contestation in this regard.

8. Learned Special Counsel for Railways submitted that the violation of bye-laws have been articulated in the counter affidavit, which is also an affidavit filed in support of the vacate stay petition.

9. It may not be necessary to dilate on those facts as law is too well settled that an impugned order cannot be improved developed or enlarged by way of a counter affidavit. Leading case which lays down this principle is **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others** reported in **AIR 1978 SUPREME COURT 851**.

10. This (now) settled position rendered by a Hon'ble Constitution Bench of Honourable Supreme Court of India has been followed and reiterated in catena of case lists.

11. Therefore embarking upon the exercise of allowing Railways to improve upon the impugned orders more so by allowing Railways to articulate what the contravention is, besides giving the specific bye laws which are all completely absent in all the impugned orders and thereafter examining the same on merits will be an exercise in futility.

12. What is of importance and significance is if the specific provision of bye-law which has been violated had been set out or even if the alleged contravention has been broadly set out or the nature of the contravention broadly indicated in the impugned



orders, it would have been possible for the writ petitioners to trace the same to bye-laws concerned and take a meaningful stand.

13. The view of this Court is fortified by the principles laid down in **Mohinder Singh Gill case**. To put it differently the view of this Court is taken by drawing inspiration from **Mohinder Singh Gill** principle, wherein Honourable Constitution Bench of Hon'ble Supreme Court relying on observations of Bose J, in **Gordhandas Bhanji** held that public orders publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order. The most relevant paragraph in **Mohinder Singh Gill case** reads as follows:

'The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginnings may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18).

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language need in the order itself".

Orders are not like old wine becoming better as they grow older.

A Caveat.'

14. Therefore, an order which is completely bereft of reasons in the beginning cannot by the time it comes to Court on account of challenge get validated by grounds and reasons being substituted by a counter affidavit. As observed by Honourable Supreme Court of India, impugned orders cannot become better with the litigation becoming older.

15. Therefore, this writ petition is disposed of on this short point.

16. The following order is passed:

(a) All three impugned orders ie.,
order/communication dated 08.01.2019 passed by the third



respondent bearing reference 2010/Sec(Spl)/6/1;
order/communication dated 09.01.2019 passed by the fifth
respondent bearing reference X/80/AIRPFA/SR and
order/communication dated 25.02.2019 passed by the sixth
respondent bearing reference No.SXT/P.420/AIRPFA/2016 are
set aside;

(b) Impugned orders are set aside on the sole ground that while alleging contravention of bye-laws in election of office bearers, the contravention of specific bye-laws or broadly the nature of contravention has not been set out;

(c) As a sequel / corollary to the aforementioned points, it is made clear that the impugned orders are set aside solely on the ground that the same cannot be improved by way of counter affidavit in the hearing when they have been called in question.

(d) It is open to Respondents 3, 5 and 6 to pass orders afresh by considering 12.11.2018 and 28.11.2018 letters regarding AIRPFA.

(e) If the respondents choose to pass fresh order (if so advised and if so desired) the alleged contravention and the contravention of the Rule in the bye-law concerned, shall be set out with clarity and specificity.

17. This writ petition is allowed and disposed of with the above observations. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

SSL

To

1.The Director General,
Railway Protection Force,
Railway Board, Rail Bhavan,
New Delhi-110001.



2.The Joint Director,
Railway Protection Force,
Railway Board,
Rail Bhavan,
New Delhi-110001.

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3.The Deputy Inspector General,
Railway Board,
Rail Bhavan,
New Delhi-11001.

4.The General Manager,
O/o The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

5.The Principal Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moor Market Complex, 6th Floor,
Chennai-600 003.

6.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Trichirapalli-1.

7.The Inspector,
Railway Protection Force,
Trichirapalli Junction Post,
Trichirapalli.

8.The Inspector,
Railway Protection Force(Colony),
Golden Rock, Trichirapalli

+1 CC to M/s.Y.KRISHNAN, Advocate (SR-97420[F] dated 11/11/2019)

+1 CC to M/s.S. MANOHAR, Advocate (SR-97660[F] dated 12/11/2019)

SSL

W.P.(MD)No.8130 of 2019
11.11.2019

KK/SAR/19.11.2019/11P-11C