LAXAMANA AND OTHERS

v.

G. P. S. WEERASOORIYA
GENERAL MANAGER OF RAILWAYS AND ANOTHER

SUPREME COURT.
WANASUNDERA, J., L. H. DE ALWIS, J. AND H. A. G. DE SILVA, J.
S.C. APPLICATIONS 116/86, 118/86, 122/86, 123/86 AND 124/86.
NOVEMBER 11 AND 12, 1986.

Fundamental Rights – Article 12 (2) of the Constitution – Railway Security Service – Right to compel officers in the Railway Security Service to undergo military or quasi-military training.

Owing to terrorist activities and unsettled conditions the Government decided that Railway Security Officers should be given further training so as to enable them to perform their duties both in protecting railway property and defending themselves. The first batch was taken to Pannala Army Camp where rigorous discipline was imposed. Owing to an incident at Pannala when a Railway Security Serviceman was assaulted the Railway Security Officers left the camp. Thereafter these Railway Security Servicemen were ordered to proceed to Tampalagrama for training. Tampalagrama is in the Eastern Province and undoubtedly a high risk area. Some went but others did not and notices of vacation of post were served on those who did not.

Held–

The Government was entitled to call upon these officers for further training. The State has plenary authority to deploy these officers to meet any situation confronting the Railway Service. There was bona fides on the part of the authorities but this will not absolve them where their actions are violative of the rights of others. From the manner of training and the subsequent deployment of the petitioners to a high risk area the Railway Authorities had not paused to consider the dividing line between what may be civil defence security and what appertains to military or quasi or para military action.

The authorities have gone beyond a matter of civil security. Though even a civil defence outfit like the Railway Security Service must be adequately trained to meet the contingencies arising from possible terrorist activity yet the rights of its members must be scrupulously respected. The treatment accorded to the petitioners cannot be justified in law. The notices of vacation of post are invalid.

APPLICATION for infringement of Fundamental Rights.

Nimal Senanayake, P.C. with *Sanath Jayatilleke, Saliya Mathew* and *Mrs. A. B. Dissanayake* for the petitioner in S.C. Application No. 116/86.

Nimal Senanayake, P.C. with *Sanath Jayatilleke, Miss S. K. Senaratne, Saliya Mathew, Mrs. A. B. Dissanayake, Miss A. D. Telespha* and *Miss Chamantha Weerakoon* for petitioners in S.C. Applications Nos. 118/86, 122/86 and 123/86.

Dr. Colvin R. de Silva with *Sanath Jayatilleke, Mrs. A. B. Dissanayake, Miss A. D. Telespha* and *Miss Chamantha Weerakoon* for the petitioner in S.C. Application No. 124/86.

S. W. B. Wadugodapitiya, Additional Solicitor-General with *Y. J. W. Wijeyatilleke, S.C.* for the 1st and 2nd respondents.

Cur. adv. vult.

December 17, 1986.

WANASUNDERA, J. read the following judgment of the Court.

ORDER OF COURT

These five fundamental rights applications (S.C. 116/86, 118/86, 22/86, 123/86 and 124/86) were consolidated and heard together at the request of all counsel. Basically, the salient facts and the law relating to these petitions are common to all, though there are some differences and variations in respect of incidental matters. The two respondents to all these applications are also common. They are the General Manager, Sri Lanka Railways and the Attorney-General. The petitioners have complained that their fundamental rights under Articles 11, 12(1) & (2), 13(4), 14(1)(*a*) to (*h*), and 10 have been infringed. In S.C. Application No. 116/86, leave to proceed was granted only in respect of Article 12(2).

To eliminate any controversy, we have chosen to rely mainly on the averments contained in the affidavits filed on behalf of the respondents in regard to the facts. Where necessary, we shall indicate any matters of importance on which the parties are at variance.

Due to terrorist activities and the prevailing unsettled conditions in many parts of the country, the Government had decided that Railway Security Officers should be given further training so as to enable them to perform their duties both in protecting railway property and also in defending themselves. In this regard the respondents have invited our attention specifically to Rule 7(*b*) of the relevant regulation which is to the effect that Railway Security Officers of all ranks–

> "shall also be required to attend any course of training that may be specified from time to time by the Chief Security Officer".

The Railway Security Service functions as a department of the Railway and is under the General Manager of Railways. It consists of about 592 security officers. It was decided that this group should be trained in three batches. The first batch to consist of 208 officers, the second of 153 officers, and the third batch to consist of the rest. This last batch was to take in all the Tamil Officers.

This training was to be done at what is known as the Pannala Army Camp, which is about 40 miles from Colombo. This camp had been established by the Government specifically for training officers such as the National Auxiliary Force personnel, home guards, security guards, etc. Accordingly, consequent to a request made by the Ministry of Security for Commercial and Industrial Establishments, the camp made arrangements for such training.

It is admitted that on 11th May 1986, 208 officers of the Railway security staff were ordered to proceed to the Pannala Army Camp for training. The 1st defendant has denied that they were sent for military training. The affidavit of Lt. Col. Wickramasekera, Commanding Officer of this camp, relied on, states that–

> "The course of training for these non-military categories cover basic drills, tactics and weapon handling. By way of contrast, military training for soldiers at established army training centres would be entirely different, inasmuch as they are trained for combat and other military operations involving intensive training and detailed lessons on various military subjects over a period of at least 4 months."

These 208 officers protested at the order, but nevertheless they proceeded to the Pannala camp. It would appear that this camp was run on Army lines. Judging from what a later batch of trainees had experienced, the discipline and the rules at this camp required these officers to reside in the camp for the required period of 30 days and they were considered to be in camp for 24 hours a day. They were entitled to a day off once in two weeks, but not allowed to go home. These strict rules providing for their confinement to the camp, the petitioners state, would have seriously interfered with their lives and liberty and their contacts and dealings with their families.

Admittedly there had been an incident on the very first or second day of their stay when one Mutu Banda, one of the officers, had been assaulted and injured by Army personnel for not complying with camp

regulations. Thereupon all the officers left the camp without permission and returned to their homes. It is also alleged that the facilities that were available at the camp were unsatisfactory. The 1st respondent admits that after representations were made, the facilities were improved.

This breakdown of relations between these officers and the Railway authorities appears to have been patched up temporarily and these officers were allowed to resume their normal duties.

Thereafter, on 10th June 1986, the officers were again ordered to proceed to the Pannala camp. Their union protested at this order. Many of those officers, by means of some device or other, actually avoided undergoing such training. Most of them had submitted medical certificates claiming exemption from this duty.

Later, on 18th July 1986, the officers were ordered to go to the Tampalagrama Army Camp at Gal Oya. 19 security officers and 2 staff officers had proceeded to this Army camp on the 18th and 19th July 1986. The others had refused to do so. Notices of vacation of post have been served on them.

The Army Camp at Tampalagrama was in the Eastern Province at the Gal Oya junction on the Trincomalee-Batticaloa railway line and apparently set up, inter alia, to guard the line of communication between Colombo and Trincomalee and Batticaloa. There was considerable terrorist activity within this area.

The petitioners state that they are public officers like other public officers of the Government and that their hours of work, shifts, attendance are similar to those of other civilian public servants. Outside their working hours they are free to be with their families and attend to personal matters. They have added that the petitioners were not recruited for service involving the use of firearms in combat or for military training. Their duties are of a civil nature and are confined to the apprehension of offenders, to protect railway property, and their area of duties does not extend beyond the precints of the railway stations, depots, workshops, and within 50 yards of either side of the railway track.

We can take notice of the fact that the kind and form of terrorist activities now prevailing in this country is unprecedented and have been inflicted on this country and the Government against its will. We are now confronted with a situation so grave that it has come to the

point of endangering the State. It is the duty of everyone, especially the public service, to take such steps as may be expected of them to meet the challenges offered by this armed separatist uprising. Public officers, like everyone else, must adapt themselves to these developments and it would be idle for them to hope that they can continue to function in the same way they have been doing in the past, without improving their skills by the necessary training and qualifications, so that they can better discharge their duties in the present context.

We are therefore of the view that the Government was entitled to call upon these officers for further training. No State can function or survive if public officers are not prepared to make some sacrifices and to adapt themselves to meet such challenges. The applicable regulations also empower the Government to do so. The need for training has not been challenged by counsel for the petitioners. What is in issue is the form, manner and content of such training programme and the nature of the service these officers are expected to perform.

It is however evident that some of the rules and regulations to which these officers were subjected to at the Army Training Camp were unduly strict. If, however, there is a continuation of violence in the country or an escalation of this violence, the people and the public officers in this country may have to undergo hardships and even some regimentation in the protection of the State.

But we are however of the view that the strict discipline imposed on these officers at the Pannala Army Camp, in the context of this case, was in excess of permissible limits. Considering the type of persons involved, their background, and the nature of their accustomed duties, some relaxation of the rules could have been effected. This irregularity by itself would not have been sufficient to invite our intervention. This irregularity was not a serious lapse—good faith is not in issue—but for the subsequent events. The training and their subsequent deployment constitutes as it were one transaction, throwing light on how the authorities have looked at and interpreted the nature of the relationship with these officers and about the intentions and actions of the authorities. The subsequent deployment, when taken in conjunction with the manner of training, gives support to the complaint of the petitioners that they have been pressed to undertake and perform services which are qualitatively different from the normal duties for which they had enlisted.

It is admitted that these officers were ordered to proceed to Tampalagrama. In this context the affidavit of the 1st respondent is of great significance, where an attempt has been made to justify the subsequent actions of the Government. The 1st respondent has denied that the lawful duties of these security officers are merely limited to protecting stations, workshops, yards and the railway track extending within 50 yards on either side of the track. The 1st respondent has stated that "security officers are required to perform any other duties specifically assigned to them". Neither he nor counsel appearing for the State has indicated any limitation on the powers of the State in this regard. It is this assumption, namely, that the State has plenary authority to deploy these officers to meet any situation confronting the railway service, which is at the heart of the problem in this case.

Paragraph 22(*e*) and (*f*) of the 1st respondent's affidavit shows the reasons for and the circumstances relating to the deployment of these security officers to Tampalagrama:

"22. (*e*) due to disturbances in certain areas of the country the train service from Trincomalee to Colombo was disrupted. As the two trains transporting 900 tons of flour from Trincomalee to Colombo were often distrupted due to the disturbances in that area there was the threat of an acute shortage of flour in the country as all flour that reached the domestic market was milled at the Prima Flour Milling Complex at Trincomalee and thereafter transported to Colombo;

(*f*) since it was vital that flour from Trincomalee should reach Colombo every day so as to avert a possible food crisis it was decided that every effort should be made to run two trains per day transporting flour. Adequate security for the trains were to be provided by the railway security officers who were to be on duty together with Army personnel. The railway security officers are expected to travel in those trains as well as guard part of the track. The railway security officers who are presently at the Thampalagrama Army Camp are only expected to guard the railway track for a distance of about 3 or 4 miles on either side of the army camp and that too also during the time trains pass, after which the railway security officers return to their camp."

In this connection, Dr. de Silva drew our attention to document 1R5 dated 19th June 1985, which was a Government Circular relating to the payment of compensation to disabled officers, employees, and to the children and widows of officers killed on duty. It contemplates the death or the disablement of such officer or employee "while on duty as a result of terrorist activity in a high risk area where terrorists are active". This circular reflects what is common knowledge, that is, that there are certain areas where the probability of terrorist activity is high or even very high as against other areas where terrorist activity may be sporadic or minimal. Tampalagrama in the Eastern Province is undoubtedly a high risk area.

The averments in the 1st respondent's affidavit reproduced above makes it clear that the train that was operating on this line, for which these officers were deployed, was not an ordinary passenger or civilian train, but a special goods train to transport essential foodstuffs which the Government was compelled to operate with army cover, whatever be the risks or hazard from terrorist activity. This spell of duty required them to reside in the Army camp where the risk of attack was high. There was in addition the further risk involved in the participation of defending this Army outpost in case of attack.

The facts of the present case indicate sufficiently that the Government was of the view that the security officers could have been deployed on any railway line where a railway service was in operation. In the Government's view it was immaterial whether it was a passenger train or a special train and whether or not it passed through a high risk area. It seems to us that the Railway authorities had made these arrangements with the best of intentions and with a desire to keep the railway services in operation. The training course was designed to this end and was part and parcel of this scheme. The mere bona fides of the authorities would not absolve them if their actions are otherwise violative of the rights of others or of the law.

It appears to us that the railway authorities have overlooked the rights of the petitioners based on their contractual relations with the Government when making these decisions. However serious or urgent the matter was, it was necessary for the Government to act lawfully and within the confines of the law. Where the law recognises rights in other persons, such rights cannot be brushed aside or overridden, but have to be given their due recognition. No government is powerless to

deal with situations such as this, however extraordinary they be. If the laws are inadequate, the Government can clothe itself with the necessary powers by enacting suitable legislation to meet such a situation.

Our attention was drawn to the Mobilization and Supplementary Forces Act, No. 40 of 1985, which appears to allow the mobilization of necessary manpower for situations where the existing security forces are considered inadequate. Apart from that, we take it that the Government has sufficient authority, if it so desires, to raise, train and equip a new Railway Security Force to meet the greater demands now made on the authorities. It may also be possible to re-constitute or revamp the existing service, taking into consideration vested rights and obligations, so as to enable a greater measure of security than contemplated hitherto to be provided for the operation of the railway service.

It is not for this court to decide on the form of the required administration arrangements or even to indicate the nature of the training and skills that would be required for this purpose. These are matters essentially for the executive and, being policy matters, the executive enjoys a wide latitude in deciding such matters. The courts will step into regulate such decisions only when they are clearly shown to transgress the bounds of the law. Our ruling is confined to the facts of this case and to pronounce whether or not in the circumstances of this case the several acts of the Government are violative of the fundamental rights of the parties.

Both from the manner of training and the subsequent deployment of the petitioners to a high risk area, it seems to us that the Railway authorities, acting in the heat of the moment, had not paused to consider the dividing line between what may be civil defence security—for which we understand there will now be a new Ministry of Civil Security—and what appertains to military or quasi or para military action. What the Railway authorities have done in this case appears to go beyond a matter of civil security. While on this matter we would like to make it clear that even a civil defence outfit like the railway security service must be adequately trained to meet the contingencies arising from possible terrorist activity. Such training could go well beyond what may be now in the contemplation of the authorities. The duty of guarding a train or Railway property may, in today's context, even in a non high risk area, necessitate a preparedness to deal with hold-ups

and sporadic attacks, which cannot be completely ruled out as unlikely in any part of the country. Physical fitness and skills in using weapons must be expected from such officers. Where such officers are vested with wide powers and are equipped with sophisticated weapons, it is of utmost importance that there should also be discipline of a high order. Such discipline is required not only in their own interests as a civil defence service, but more important in the interests of the public whose rights must be scrupulously respected. Army training schemes would have to take all these factors into consideration even though such officers may be regarded as performing non-military duties.

In the result we hold that the Railway authorities should have approached this matter with greater circumspection and care. The training and manner of deployment of those officers reveal a lack of due appreciation of the distinction between security arrangements of an essentially civilian nature as against military or quasi-military operations. The breakdown of relations between the authorities and these officers could be attributed to this error and the present state of affairs is unsatisfactory and does no good to anybody.

The Deputy Solicitor-General objected to some of the petitions on the ground that in S.C. 118/86, S.C. 122/86 and S.C. 123/86 the petitions were not supported by as many affidavits as there are petitioners. He submitted that this is required by regulation 65 of the Supreme Court Rules. We find that each joint petition is supported by an affidavit. We do not think that there is substance in this objection, nor do we feel it necessary to rule on his objection that some of the affidavits contain hearsay matter and those averments should be disregarded. Since all these applications were not dealt with separately, but were consolidated and heard as one, on his own application, there is sufficient admissible material on record to warrant our findings.

The treatment accorded to the petitioners cannot be justified in law. We therefore declare that the notices of vacation of post served on them are invalid. This order would however not affect orders of interdiction, if any, which may have been made on other grounds not connected with the specific matter before us.

We are not disposed to giving any further relief other than costs. Our order leaves it open to the authorities to arrange a satisfactory training course for these officers and for their deployment on the lines indicated in this judgment. While allowing these applications, we would also award the petitioners in S.C. 116/86 and S.C. 124/86 costs in a sum of Rs. 1,500 each, and the petitioners in S.C. 118/86, S.C. 122/86 and S.C. 123/86 costs in a sum of Rs. 2,500 each. This would be payable by the State.

Applications allowed.