

JAYASEKERA
V.
WIPULASENA AND OTHERS

SUPREME COURT

H. A. G. DE SILVA J. G. P. S. DE SILVA, J. AND JAMEEL, J.

S. C. APPLICATION NO. 157/87

JUNE 30, 1988

Fundamental Rights — Article 12(1) of the Constitution — Unequal treatment — Bus pass — Validity of bus pass.

The petitioner 'a Police Officer' complained he was not allowed to travel on a bus despite his having a pass P1 while a colleague of his with a similar pass was allowed to do so. According to the rules "a travel pass (on a bus) is valid for a calendar year and expires on 31st December of each year. Requests for extensions should be sent through the employer to the Operations Controller, Sri Lanka Central Transport Board before 31st December each year". The bus pass on which petitioner travelled bore no expiry date. Having regard to the condition stipulated in the above rule, P1 was not a valid pass. Although the petitioner's colleague was allowed to travel no complaint of discrimination would be justified. Article 12(1) cannot confer on the petitioner a right to which he is not entitled in terms of the very contract upon which he founds his complaint of "unequal treatment". An authority cannot be required to act illegally in one case because it has acted illegally in other cases.

Cases referred to:

1. *Setty v Commissioner, Corporation of the City of Bangalore* AIR 1968 Mysore 251
2. *Roberts v. Ratnayake* (1986) 2 Sri LR 36

APPLICATION under Article 126 of the Constitution.

R. K. W. Goonasekera with *Anton Fernando* and *G. D. Piyasiri* for petitioner.
Jaufer Hassan with *Padmini Gunasinghe* for 1st, 2nd and 3rd respondents.

Cur. adv. vult.

July 21, 1988

G. P. S. de Silva, J.

This is an application under Article 126 of the Constitution complaining of "unequal treatment" in violation of Article 12(1). The petitioner is a Police Sergeant attached to the Bribery

Commissioner's Department. The 1st respondent is a bus conductor attached to the North Central Transport Board, while the 2nd and 3rd respondents are the Transport Manager and the Chairman, respectively, of the Colombo North Regional Transport Board. According to the petitioner, he was issued with a valid bus pass by the Police Department which entitled him to travel without payment from Kurunegala, his place of residence, to Longdon Place, Colombo, his place of work, and back home after the day's work was over. On the day in question, namely 08.10.87, the petitioner along with his colleague, Police Sergeant Abeysinghe, had left their place of work at about 4.05 p.m. and had arrived at the Colombo central bus stand at Pettah at about 4.45 p.m. in order to travel back to his residence at Kurunegala. In his petition he avers that there was bus No. 30 Sri 7418 bound for Polonnaruwa via Kurunegala. The 1st respondent was the conductor of this bus. According to the petitioner, there was no queue but some passengers were already in the bus and he along with his colleague Police Sergeant Abeysinghe and one Fernando who was an Army Corporal boarded the bus, having informed the 1st respondent that they were all travelling on bus passes. The petitioner's case is that while the 1st respondent objected to his using the bus pass to travel on this bus to Kurunegala, the 1st respondent did not object to either Police Sergeant Abeysinghe or Corporal Fernando travelling on their bus passes. He contends that the aforesaid conduct of the 1st respondent amounts to hostile discrimination in violation of Article 12(1) of the Constitution. In his petition he further avers that an officer attached to the Central Transport Board demanded his bus pass and took it away and he was not allowed to travel on the bus. He has produced along with his petition and affidavit a photocopy of his bus pass marked P1 and photocopies of the bus passes of Police Sergeant Abeysinghe and of Corporal Fernando, marked P2 and P3 respectively.

The 1st respondent (the bus conductor) in his affidavit takes up the position that the petitioner had, without waiting in the queue, boarded the bus out of turn while a large number of passengers were yet standing in the queue. He had then examined the petitioner's bus pass and he formed the view that

the petitioner was not entitled to travel in this bus as this was a bus bound to Polonnaruwa and he was required to give priority to passengers travelling *beyond* Kurunegala. It was his position that there was a large number of passengers who were travelling beyond Kurunegala. Since the petitioner had insisted on travelling in this bus, he had reported the matter to Samaranayake, the Assistant Manager (Traffic) who in turn had instructed one Tilakaratne to look into the complaint of the 1st respondent. Tilakaratne had thereupon boarded the bus and questioned the petitioner. The petitioner had insisted on travelling in this bus and when Tilakaratne had asked him to come and meet Samaranayake, the petitioner had refused to do so and wanted Samaranayake to come to the bus and speak to him. Tilakaratne had taken the petitioner's bus pass and handed it over to Samaranayake.

On examination of the petitioner's bus pass P1, it was discovered on that day itself, that it did not have the expiry date stamped on it. The fact that P1 did not bear the date of expiry is not disputed by the petitioner. The petitioner's position is that it is not at all necessary to have the date of expiry stamped on P1 because a bus pass issued to a Police Officer is valid "until the holder changes his station and/or his place of residence or dies, resigns, retires, is interdicted, or has his enlistment cancelled" (paragraph 21 of the petition). On the other hand, it was the position of the respondents that P1 was invalid as it did not have the date of expiry stamped on it. In fact W. H. Gunatilake, the Traffic Manager who was on duty that day has in his affidavit averred that he had informed the petitioner that his "pass was mutilated and was invalid and did not contain an expiry date".

The first question that arises for decision was whether P1 was valid or not. On this issue, the document 2R1 which sets out the "conditions applicable to travel passes" has a direct bearing. It provides, *inter alia*, as follows: "The travel pass is valid for a calendar year and expires on 31st December of each year. Requests for extensions should be sent through the employer to the Operations Controller, Sri Lanka Central Transport Board before 31st December each year." Having regard to the above condition stipulated in 2R1, I hold that P1 was not a valid bus pass.

Mr. Gunasekera, Counsel for the petitioner next contended that even if P1 was invalid, there was "discrimination" within the meaning of Article 12(1) for the reason that Police Sergeant Abeysinghe whose bus pass (P2) admittedly did not bear the date of expiry was allowed to travel that day. Mr. Gunasekera's submission in short was that on the admitted facts there was a clear infringement of Article 12(1).

In regard to Police Sergeant Abeysinghe's use of the bus pass (P2) which also did not bear the date of expiry, there is one important fact which emerges from a careful reading of the affidavits filed of record. The officers of the Transport Board did not at any stage call for or examine the bus pass of Police Sergeant Abeysinghe. There is no material on record which even suggests that the respondents were aware at anytime on that day that Police Sergeant Abeysinghe who had already boarded the bus was using an invalid bus pass. In so far as Abeysinghe was concerned, the position appears to be that he was permitted to travel on his bus pass owing to an inadvertent omission on the part of the 1st respondent to check on it.

I have already held that P1 is not a valid bus pass. The petitioner not having a valid bus pass was rightly not allowed to travel in the bus. The fact that Abeysinghe also did not have a valid bus pass was not a matter which the respondents were aware of on that day. In these circumstances, could the challenge based on Article 12(1) succeed? I think not. It was not disputed that the bus pass issued to the petitioner was pursuant to a contract entered into between the Police Department (of which the petitioner was a member) and the Transport Board. In my opinion, Article 12(1) cannot confer on the petitioner a right to which he is not entitled in terms of the very contract upon which he found his complaint of "unequal treatment".

The view I have taken gains some support from the case of *T. V. Setty v. Commissioner, Corporation of the City of Bangalore* (1). That was a case where the petitioner made an application under Article 226 of the Constitution of India challenging the orders of the Bangalore City Municipal Corporation refusing him a licence to carry on manufacture of soaps in the premises in

which he has been so doing. It was contended for the petitioner, inter alia, that a number of soap manufacturers carrying on manufacture in similar circumstances as the petitioner, were granted licences while the petitioner was denied a licence, thus infringing Article 14 of the Constitution of India (which corresponds to Article 12 of our Constitution). Dealing with this submission Chandrashekhar J. expressed himself thus: "Assuming that the Corporation has issued to those persons licences improperly and against the provisions of the Corporation Act and by laws thereunder, Article 14 of the Constitution cannot be understood as requiring the authorities to act illegally in one case because they have acted illegally in other cases".

Before I conclude, it is right to add that the main ground on which the respondents sought to resist the petitioner's application was that the petitioner's right to travel on a bus pass arises from a non-statutory contract between the Police Department and the Transport Board; that the rights and liabilities of parties being purely contractual in character, the provisions of Article 12(1) have no application. In support of this contention Counsel for the respondents relied very strongly on the majority judgment in *Roberts v. Ratnayake* (2) which took the view that in a purely contractual situation the provisions of Article 12(1) have no application and cannot be invoked. Having regard to the view I have expressed above, it is not necessary to consider the submissions based on *Roberts v. Ratnayake* (supra) made by Counsel for the petitioner as well as Counsel for the respondents.

In the result, the application fails and is dismissed, but without costs.

H. A. G. DE SILVA, J. — I agree.

JAMEEL, J. — I agree.

Application dismissed.