

(1999) 03 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. 10978 of 1997

Kumar Arun Chandra Singh		APPELLANT
	Vs	
State of Bihar and Others		RESPONDENT

Date of Decision : 13-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1999 Patna 137

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : R.B. Mahto and Nawniti Singh, for the Appellant; G.P. Roy, A.A.G., S.J. Rahman, G.P. VII and N.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai

1. The petitioner has filed the present writ application for quashing the order dated 31 st October, 97 passed by the District Magistrate-cum-Licensing Authority, Manager (respondent No. 4) cancelling the settlement of Munger Raj Ferry Ghat made in favour of the petitioner for the calendar year, 1998 and 1999 as well as the fresh advertisement dated 15-11-97 issued for fresh auction of the said Ferry. A copy of the order dated 31-10-97 as well as a copy of the advertisement for auction has been annexed as Annexure 10 and 11 respectively to the writ application.

2. The District Magistrate-cum-Licensing authority (respondent No. 4) took steps for settlement of the aforesaid Ferry under the provision of the Bengal Ferry Act and in pursuance of an auction notice an auction was held on 30th December, 1996 and Kumar Arun Chandra Singh (respondent No. 8) offered the highest amount for Rs. 7,89,000/- and his bid was accepted and he was directed to deposit the amount within ten days failing which Ferry was to be settled with the second highest bidder, namely, the petitioner who offered Rs. 7,88,000/-. He

only deposited apart of the bid amount and thereafter the period of depositing the amount was expended by the Commissioner of the Division even then the entire amount was not deposited. Therefore, the writ petitioner filed a petition before the Commissioner pointing out that the bid amount has not been deposited by the respondent No. 8 within the time allowed by him and then the Commissioner by an order dated 7-2-97 cancelled the settlement made in favour of the respondent No. 8 as he had not paid the entire amount and ordered for settlement of the aforesaid Ferry in favour of the petitioner being the next highest bidder. Thereafter, respondent No. 8 filed a petition before the Commissioner to stay the order which was rejected by him. In the meantime, the petitioner deposited bid money of one year and on 24-2-97 a parwana was issued in his favour and the petitioner started plying the Ferry.

3. On 13-3-97 respondent No. 8 filed a writ application being C.W.J.C. No. 2454/97 and the same was finally disposed of on 21-7-97, a copy of the said order has been annexed as Annexure-2 to the writ application. One of the points raised in the said application was that the vessel in question being plied by the petitioner was not of specified capacity. At this stage, it is to be mentioned that according to the terms of the advertisement the bidder was required to offer the two vessels. One vessel of 1000 passengers capacity and the other of 300 passengers capacity. This Court did not decide the aforesaid question and observed that it is always open to the licensing authority (respondent No. 4) to pass an appropriate order directing respondent No. 3 (petitioner) to substitute the existing Vessels-by Vessels of the required capacity in the event he fails to comply with such direction to take an appropriate action to the extent of cancelling the settlement. This Court further observed that while considering this aspect of the matter the respondent No. 4 District Magistrate, to keep in mind the safety and interest of the passengers that is public interest.

4. It appears that the respondent No. 8 though lost the case before this Court filed an application before the Transport Commissioner complaining that one Vessel which was being plied by the petitioner was without a valid survey certificate. The said application was forwarded by the State Transport Commissioner vide memo dated 14-7-97 to the District Magistrate-cum-Licensing Authority (respondent No. 4) with a direction to take necessary action in the matter. Respondent No. 4 thereafter appears to have called for a report from the Sub-divisional Officer of the district, who submitted a report dated 29-9-97 that the Vessels which were being plied were without upto date survey certificate. He also mentioned in his report that the petitioner has submitted an application form and fee for obtaining survey certificate, a copy of the said report has been annexed as Annexure-B to the counter-affidavit filed by the State. The Dy. S.P., Special Branch Manager vide letter dated 11-8-99 informed the Superintendent of Police (B) Special Branch Patna that the Vessels are being plied by the petitioner without up-to-date Survey Certificate. A copy of the same was also sent to the respondent No. 4, a copy of which has been annexed as Annexure-G to the counter-affidavit. The Motor Vehicle Inspector-cum-Surveyor Inland

Vessels, Manager also reported to the Chief Surveyor Bihar vide memo dated 5-9-97 with a copy to the respondent No. 4 that the Vessels M.T. Indraprasth which was being plied by the petitioner is technically unfit for ferry service and recommended for suggestion of renewal of the survey certificate, a copy of which has been annexed as Annexure-D to the counter-affidavit. The said Motor Vehicle Inspector-cum-Surveyor by memo dated 5-6-97 is stated to have directed the petitioner to stop plying of Vessel, namely, M.V. Benani Bangla forthwith. A copy of the said letter has been annexed as Annexure-E to the counter-affidavit. District Magistrate-cum-Licensing Authority (respondent No. 4) by order dated 7-9-97 suspended the settlement made in favour of the petitioner and issued notice to show cause as to why the settlement made in his favour be not cancelled on the ground that the reports of the Sub-divisional Officer and the Dy. Superintendent of Police show that one Vessel was being plied without valid survey certificate which is in breach of the terms of the settlement and is also dangerous to the public and the report of the Motor Vehicle Inspector shows that one of the Vessels was found to be technically unfit and he also stopped plying another Vessel M.V. Benani Bangla on the ground that there was no valid survey certificate.

5. On 12-9-97 the petitioner filed a show cause wherein he stated inter alia that none of the reports relied upon was either annexed or was supplied to him. In absence of that it was not possible to him to file affective show cause. It is also not stated in the notice as to which Vessel was found to be unfit as reported by the Motor Vessel was found to be unfit as reported by the Motor Vessels Inspector and what was the basis for that nor it was stated as to which of the Vessel was found to be plied without valid survey certificate. It was, also stated that the so called enquiry by the aforesaid authorities were not conducted in presence of the petitioner. It was also stated that the aforesaid enquiry was conducted at the instance of the respondent No. 8. It was further stated that the petitioner was not informed about any deficiency or defect before suspending the operation of the Ferry. A copy of the said show cause has been annexed as Annexure-B to the writ application.

6. On 19-9-97 the petitioner filed an application before the District Magistrate (respondent No. 4) that he may be granted an opportunity of personal hearing to explain the entire matter. The petitioner again filed a supplementary show cause, a copy of which has been annexed as Annexure-7 to the writ application. Apart from reiterating the grounds mentioned in the earlier show cause it was specifically stated that Vessel M. T. Indraprasth which was being plied by the petitioner has a valid survey certificate upto March, 1998 and as such it was wrongly stated in the notice on the basis of the report submitted behind his back that he was operating the said Vessel without valid Survey Certificate. It was also stated with regard to other Vessel Benani Bangla that the petitioner has already filed a petition for grant or survey certificate along with fee and as such there was no result on the part of the petitioner and in past also this Vessel was being plied when the matter of renewal was pending. As such there is no violation of

terms and conditions of the lease. It was specifically stated that the enquiries were held behind the back of the petitioner and none of the report was supplied to him. As such he is not in a position to file an affective show cause. The District Magistrate (respondent No. 4) vide Order dated 5-10-97 rejected both the show causes filed on behalf of the petitioner on the ground that in the show cause it was not asserted anywhere by the petitioner that in terms of the conditions of the settlement the petitioner made available two Vessels of the capacity of 300 passengers and 1000 passengers with upto date survey certificate and issued second show cause wherein seven days time was granted to the petitioner to produce two Vessels of the capacity of 300 passengers and 1000 passengers with up-to-date survey certificate otherwise in terms of the order passed in C.W.J.C. No. 245/97 his settlement will be cancelled in public safety and public interest. A copy of the said show cause notice has been annexed as Annexure-8 to the application. Thereafter, the petitioner filed a show cause on 21-10-97, a copy of which has been annexed as Annexure-9 to the writ application, wherein apart from slating the other thing it was stated that Vessel M. T. Indraprast has valid survey certificate and other Vessels were also at the Ghat. The District Magistrate-cum-Licensing Authority (respondent No. 4) thereafter by the impugned order dated 30-10-97 cancelled the settlement made in favour of the petitioner (Annexure-10) and after that a fresh advertisement dated 15-11-97 was issued for fresh auction for the settlement of the said Ferry.

7. A counter-affidavit on behalf of the State two supplementary affidavit on behalf of the respondent No. 4 and an affidavit on behalf of the respondent No. 8 have been filed.

8. It is stated in the counter-affidavit and the supplementary affidavits that the District Magistrate has cancelled the licence as there was failure of terms and conditions of the settlement. He gave an opportunity to the petitioner even by 2nd show cause to produce Vessels technically fit and with upto date survey certificate at the time of settlement to the satisfaction of the Motor Vehicle Inspector and on failure to comply the same the licensing authority has no option but to cancel the settlement for protecting the life and property of the citizen. It is further stated that in view of the interim order of this Court restraining the settlement of Ferry in favour of any person by order dated 5-12-97 the respondent No. 4 in order to regulate the Ferry service in the public interest, law and order and ensuing Lok Sabha Election tool. Vessel or respondent No. 8 on hire basis which was technically fit with up-to-date survey certificate for Ferry service at the hire charge of Rs. 5000/- per day. The total collection made from 1-1-98 to 8-2-99 is Rs. 18,95,546/- and out of that Rs. 17,18,906/- has been paid as hire charge to their respondent No. 8 and Rs. 1,76,640/- has been deposited in the Government Treasury.

9. The respondent No. 8 in his counter-affidavit has stated that his Vessel was only on hire by the District Magistrate-cum-Licensing Authority (respondent No. 4). He has also justified the cancellation of licence on the ground mentioned in

the counter-affidavit filed on behalf of the respondent No. 4. 10. The petitioner has filed reply to the counter-affidavit and supplementary counter-affidavits and reiterated the same very thing. 11. The petitioner has challenged the impugned order on the ground that the said order has been passed without giving even an effective opportunity of hearing in the matter. In this connection it is pointed out that the reports submitted by the authorities as mentioned in the notices were made on the basis of the enquiries held behind the back of the petitioner. Copies of the said reports were not supplied to the petitioner in spite of specific request having been made in the show cause filed on his behalf. As such the impugned order contained in Annexure-10 is vitiated on the ground of non-observance of principle of audi alteram partem. It is also stated that the order passed by the District Magistrate is arbitrary and mala fide as the same has been passed with sole view to help the respondent No. 8. It was also submitted on behalf of the petitioner that the respondent No. 8 having lost the matter before this Court again raked up the matter by filing a petition before the Transport Commissioner and thereafter on the basis of the enquiries behind the back of the petitioner the cancellation order has been passed. While the matter was pending in this Court the respondent No. 4 without informing this Court took the Vessel of the respondent No. 8 on hire @ Rs. 5000/- per day and has benefitted him at the cost of the State Exchequer. 12. Learned counsel for the State on the other hand contended that the petitioner did not either comply with the terms and conditions of the settlement by producing two vessels technically fit or required capacity of the passengers with up to date survey certificate. The respondent No. 4 has cancelled the settlement in view of the observation made by this Court in the aforesaid writ application. The cancellation order has been passed after giving full opportunity of hearing to the petitioner. With regard to the statement of arbitrariness and mala fide on the part of the licensing authority it has been submitted that the same are wholly unfounded as to cater the need of public and due to ensuing Lok Sabha Election the respondent No. 4 as an interim measure took the Vessel of respondent No. 8 on hire and paid hire charge and the same was not done with a view to help or benefiting the respondent No. 8 as asserted by the petitioner. 13. Admitted fact is that the settlement was made in favour of the petitioner which was upheld by this Court. Thereafter, the respondent No. 8 having lost the matter before this Court raked up the matter before the Transport Commissioner that the Vessels being used for Ferry had no valid survey certificate and the matter was sent by him to the Licensing Authority (respondent No. 4), who, as stated above, has cancelled the settlement in favour of the petitioner. 14. The order of cancellation of settlement is an administrative order but at the time of cancelling the settlement the power exercised by the licensing authority is to be of the quasi judicial nature. The order has to be passed after fulfilling the requirement of principle of natural justice. Audi alteram partem is the basic concept of the natural justice. Two basic facets of this principle are to make known the nature of the accusation to the affected person and to give him an opportunity to present his case. This principle has been applied to ensure fair play and justice to the person concerned. In other words, the principle is applied

to prevent the miscarriage of justice. An opportunity of hearing or presenting his case should be real and in proper spirit and mere pretence of compliance is not sufficient. There should be fairness in the action in the sense that an opportunity of hearing should not remain as an empty formality. The party should be given an opportunity to present his case on question of law and facts. 15. The Apex Court in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, has held that the administrative order affecting rights of a citizen is a quasi judicial and full opportunity should be given to the effected person to present his case on the question of law as well as on facts and there should be a disclosure of all the materials to the parties against whom it is intended to use them. It has been held in paragraph-7 which runs as follows; Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding or the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensure that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law had correctly applied and the decision was just." 16. It has to be seen is as to whether the petitioner has been afforded an opportunity of hearing before the cancellation of settlement or not. While suspending the settlement, respondent No. 4 issued a show cause notice against cancellation (Annex-4) on the grounds mentioned in the report of the Sub-divisional Officer, the Dy. S. P. Special Branch and the Motor Vehicle Inspector. The aforesaid authorities admittedly reported the matter behind the back of the petitioner. The copies of the reports were not supplied to the petitioner along with the show cause. The petitioner in all the show cause filed by him requested for supply of the aforesaid copies for giving an effective show cause. The same were not supplied to him. Even if the writ petitioner in paragraph-26 of the application has specifically stated that those reports were not supplied. In the counter-affidavit nowhere it is stated that copies of the said report were supplied at any point time to the petitioner. Only statement made in that report of the Motor Vehicle Inspector shows that the same has been sent by him to the petitioner but this fact has been denied by the petitioner. Thus, the

admitted fact is that the reports which form the basis of cancellation were not supplied to the petitioner. 17. Non supply of the aforesaid reports forming the basis of cancellation of the settlement is the denial of fair opportunity of hearing to the petitioner. Non-supply of the reports has caused prejudice to the petitioner as he has been deprived of knowing the contents of the same and to contest the same by filing an effective show cause and producing other relevant materials. On this ground the impugned order of the respondent No. 4 is vitiated. 18. Learned counsel for the petitioner during the course of hearing drew my attention to certain documents to show that the petitioner had offered vessel of the required capacity in terms of the interim order passed by this Court but the licensing authority (respondent No. 4) on false pretext with sole subject to benefit the respondent No. 8 by hiring his vessel at exorbitant rate refused to accept the same. 19. The materials on the record clearly show that in terms of the interim order passed by this Court the petitioner had produced one technically fit vessel of the required capacity having up to date survey certificate but that was rejected on the ground that there was no agreement between the owner of the vessel and the petitioner. In such a case the respondent No. 4 should have asked the petitioner to produce the agreement with the owner of the vessel but without asking he has rejected the aforesaid Vessel. Not only this when this Court stayed the settlement of Ferry in pursuance of the fresh advertisement the licensing authority without informing this Court took the Vessel of respondent No. 8 on payment of Rs. 5000/- per day on hire basis and has paid, as stated above, more than Rs. 17 lacs as hire charge and the State has got only Rs. 1,76,640/- whereas by virtue of the settlement the State would have got Rs. 7,88,000/-. The respondent No. 4 before taking the Vessel of respondent No. 8 on such exorbitant rate should have brought the fact to the notice of the Court. However, the respondent No. 4 appeared in the Court and admitted that that was a mistake on his part. 20. Be that as it may, the Court on the basis of the materials cannot come to the conclusion that the respondent No. 4 has acted in connivance with the respondent No. 8. However, the respondent No. 4 has erred in taking Vessel of respondent No. 8 on such an exorbitant rate without making any attempt to find out as to whether any other Vessel was available for Ferry service at a cheaper rate or not. 21. So far the order of cancellation of the settlement is concerned it has to be quashed for the simple reason that the order has been passed on the basis of the report, copies of which were admittedly not supplied to the petitioner. Thus, there is denial of fair opportunity for presenting the case to me petitioner before passing the adverse order against him and on this ground alone the order contained in Annexure-10 is quashed. As a result of the aforesaid cancellation the issuance of the fresh advertisement as contained in Annexure-11 is also quashed. 22. The effect of quashing of the aforesaid order is that the settlement in favour of the petitioner is revived. However, in public interest the petitioner cannot be allowed to ply the Vessel unless he would produce the Vessel of the specified passenger capacity with technically fit having up to date survey certificate. It is claimed by the petitioner that he will produce the same before the authority concerned. 23.

Accordingly, if the petitioner produces the Vessels of the aforesaid description then he shall be allowed to ply the same immediately. In case of any technical defect the petitioner should be informed and should be given sufficient time to rectify the defect or substitute the Vessel. Only in case of failure of the petitioner to produce the Vessel of the aforesaid description the District Magistrate (respondent No. 4) will pass an appropriate order quashing the cancellation of the settlement in terms of the provision of the Bengal Ferry Act and in the light of the observation made by this Court. In case of cancellation of settlement. It will be open for him to take an interim measure keeping in mind the public interest and the public exchequer in the sense that Vessel should not be hired at exorbitant rate in clandestine manner. It is made clear that if on wrong pretext the petitioner will not be allowed to ply the Vessel with a view to help the respondent No. 8 then this Court will take a serious view of the matter and take an appropriate action against the erring officials. 24. In the result, the application is allowed with the aforesaid observation.