

(2003) 11 PAT CK 0087
In the Patna High Court
Case No : C.W.J.C. No. 10539 of 2002

Mahnar Nagar Panchayat and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 11A, 136, 137, 3(14B), 356
Central Motor Vehicles Rules, 1989 — Rule 191
Constitution of India, 1950 — Article 243Q(1), 243W
Motor Vehicles Act, 1988 — Section 117

Citation : (2004) 2 PLJR 434

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Harendra Pd. Singh, for the Appellant; S.D. Yadav, for State and S.S. Asghar Husain and S. Azeem, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This case presents the North Bihar Regional Transport Authority and the district administration of Vaishali in poor light before the court and the facts of the case typically illustrate how the constitutional scheme is flouted and subverted at the grass-root level by the very same statutory authorities and the Administration that bear the legal obligations and responsibilities to give effect to the provisions of the Constitution.

2. The Petitioner before the court is the Nagar Panchayat, Mahnar (Vaishali). It is a "Municipality" envisaged under Article 243Q(1)(a) of the Constitution. It is defined u/s 3(14B) of the Bihar & Orissa Municipal Act and it was constituted by the State Government by issuing the notification under memo No. 2651, dated 30.8.2001 in exercise of its powers u/s 6, read with Section 390E of the Municipal Act. Article 243W of the Constitution deals with powers, authorities and responsibilities of municipalities and the 12th schedule of the Constitution enumerates the areas and spheres over which the municipalities would exercise their authority and jurisdiction. What are enumerated in the 12th Schedule are

fully incorporated in Section 11A of the Municipal Act and on a perusal of the list, in particular Item No. 17 of the 12th Schedule and Clause XVIII of Section 11A of the Municipal Act, one should think that the right to set-up and run a bus stand should come naturally to the Nagar Panchayat or in any event the claim of the Nagar Panchayat in this regard would be far more preferential than an individual person. But the North Bihar Regional Transport Authority and the district administration of Vaishali seem to think otherwise.

3. In this case the process for setting up and operating the bus stand was initiated by the Nagar Panchayat, Mahnar but since the Nagar Panchayat did not have its own land, it issued a notice looking for a suitable piece of land for setting up a bus stand to be taken by it on lease. It received offers of land and found one of them suitable for its purpose. But at the end of the day the Regional Transport authority and the district administration granted permission for setting up and running the bus stand to the individual person (Respondent No. 7) whose land the Nagar Panchayat had selected for setting-up the bus stand under its own control.

4. This Court would have understood if the whole thing was the result of some oversight and it would have appreciated had the authorities shown any remorse over the mistake and tried to correct it. But the worst part of it all is that the Respondent authorities have brazenly tried to defend what is indefensible and their stand and conduct before the court gives rise to suspicions of foul play.

5. The Nagar Panchayat, Mahnar, as noted above, was established along with 76 other Nagar Panchayats vide notification No. 2651, dated 30.8.2001 and its present set of Municipal Commissioners were elected in the election, the result of which was declared on 3.5.2002. The Municipal Commissioners later elected the Chairman (who represents the Nagar Panchayat as Petitioner No. 1) and the Vice Chairman (Petitioner No. 3)

6. Even before the Nagar Panchayat was constituted by elected Municipal Commissioners and while it was still under a Special Officer, a meeting was held on 2.2.2002 to consider the ways and means to augment its extremely poor finances. In the meeting a resolution was adopted that a bus stand as well as a Taxi, Maxi & Jeep-Commander stand be set up under the Nagar Panchayat and the Deputy Transport Commissioner may be moved for granting permission for that purpose under the Motor Vehicles Act. A copy of the resolution, dated 2.2.2002 is at Annexure 2. The Dist. Magistrate, Vaishali was apprised of the resolution by letter, dated 18.1.2002 (Annexure 3) in which it was pointed out that the resolution of the Nagar Panchayat came under Sections 137 and 356 of the Municipal Act. Another letter was sent to the Deputy Transport Commissioner-cum-Secretary, North Bihar Regional Transport Authority, Muzaffarpur under memo No. 33, dated 2.2.2002 (Annexure 4). In this letter, it was stated that there was no fixed bus stand or Taxi, Maxi stand at Mahnar and vehicles were parked randomly at awkward places on the road causing much inconveniences and a risk of major accident. Further, that with a view to improve the finances of

the Nagar Panchayat, a resolution was adopted in the special meeting held on 18.1.2002 for setting up a bus-stand by the Nagar Panchayat and to obtain the necessary permission in this regard from the North Bihar Regional Transport authority. It was further stated in the letter that the resolution of the Nagar Panchayat came u/s 136 and 137 of the Municipal Act. A request was, accordingly, made for grant of permission to the Nagar Panchayat to set-up a bus stand and a Taxi, Maxi stand.

7. On 8.3.2002 the Nagar Panchayat issued a general notice (Annexure 5) for taking a suitable land on lease for setting up a bus, Taxi, Maxi, Jeep-Commandar stand and invited applications from owners of land. In response to the notice, the Nagar Panchayat received three applications including one by Ranjana Rani, Respondent No. 7 (copy of her application is at Annexure 6-b). All the three applications were forwarded to the Dy. Collector Land Reforms vide letter, dated 18.3.2002 (Annexure 6) for necessary enquiry and comments in regard to the respective lands offered, by the three Applicants. Later on, an agreement was arrived at for taking the land of Respondent No. 7 on lease for three years from 1.4.2002 to 31.3.2005 and an agreement, dated 22.3.2002 (Annexure 7) was executed in that regard by the Special Officer, Mahnar Nagar Panchayat and the landowner, Respondent No. 7. On the same date a Kirayanama (Annexure 8) was executed by the Special Officer and Respondent No. 7 in terms of which the land-owner gave the land for five years (1.4.2002 to 31.3.2007) for setting up the bus stand on annual rental of Rs. 18,000/-. From a perusal of the agreement and the Kirayanama, it is evident that the land-owner had agreed to give land to the Nagar Panchayat on lease on rental for a bus-stand to be established there by the Nagar Panchayat. Neither in the agreement nor in the Kirayanama, there is any suggestion that the proposed bus-stand was to be set up by the land owner herself.

8. On 23.2.2002 the Deputy Collector Land Reforms by his letter No. 69, addressed to the Sub-divisional Officer, Mahnar submitted a report (Annexure 10) stating that permission could be granted to the Nagar Panchayat for setting-up the bus-stand, Maxi Taxi stand on the land of plot No. 4671, under Khata No. 1195 measuring 15 kathas 3 dhurs in area, that is, the land offered by Respondent No. 7. On the same day the sub-divisional Officer, Mahnar forwarded the report of the Deputy Collector Land Reforms to the Deputy Collector, Incharge, District Collectorate, Vaishali expressing his concurrence with the recommendation made in the report.

9. On the basis of the report(s) the Dist. Magistrate, Vaishali by his letter No. 343, dated 30.3.2003 (Annexure 12) made, a recommendation to the Deputy Transport Commissioner-cum-Secretary, North Bihar Regional Transport Authority for grant of necessary permission to the Nagar Panchayat for setting-up and operating the bus stand and Taxi, Maxi stand on the land offered by Ranjana Rani (Respondent No. 7). On the same date the Dist. Magistrate by another letter bearing No. 344, dated 30.3.2003 (Annexure 13) informed the Special Officer,

Nagar Panchayat that recommendation for grant of permission had already been sent to the Regional Transport Authority and awaiting necessary permission from the Authority, the Nagar Panchayat should make collection of tolls through its staff with effect from 1.4.2002. It was even stated in the letter that the Special Officer, Nagar Panchayat must ensure a minimum collection of Rs. 2,21,100/- as being the revenue collected for the year, 2000-01. On receipt of the letter, dated 30.3.2002, the Special Officer of the Nagar Panchayat by his order dated 31.3.2002 (Annexure 14) made a roster, assigning duties to the staff of the Nagar Panchayat for collection of toll from the bus-stand.

10. In total and complete disregard of these facts and circumstances that are taken note of in the preceding paragraphs the Secretary, North Bihar Regional Transport Authority issued an order under his memo No. 601, dated 28.5.2002 (Annexure 15). In this order, it was stated that in view of the recommendation made by the Dist. Magistrate under his letter No. 343, dated 30.3.2002, approval for running the Mahnar bus stand was granted to Respondent No. 7. This order had no basis and it wrongly and falsely stated that the Dist. Magistrate in his letter No. 343, dated 30.3.2002 had recommended for grant of permission in favour of Ranjana Rani. As already noted above, the Dist. Magistrate had recommended for grant of permission to the Nagar Panchayat for setting-up the bus-stand on the land of Ranjana Rani taken by the Nagar Panchayat on lease.

11. Following the order of the Secretary, Regional Transport Authority, dated 28.5.2002, the Dist. Magistrate made no demur and simply issued the consequential order under this memo No. 565, dated 17.6.2002 (Annexure 16) recalling his earlier order, dated 30.3.2002 (Annexure-13) and granting permission to Respondent No. 7 to set-up and run a bus stand on her land and to collect tolls from different kinds of vehicles at the rate indicated in the order.

12. The Nagar Panchayat thereafter wrote letters to the district administration as well as the Regional Transport Authority protesting against the grant of permission to Respondent No. 7, but, no response was elicited. The Nagar Panchayat finally filed this writ petition challenging the order, dated 28.5.2002 (Annexure 15) issued by the Secretary, Regional Transport Authority and the consequential order, dated 17.6.2002 (Annexure 16) issued by the Dist. Magistrate.

13. This case was taken up for the first time on 7.2.2003 when notices were directed to be issued to Respondent No. 7. On 8.4.2003 this Court passed an interim order by which the operation of the order at Annexure 15 was stayed and Respondent No. 7 was restrained from operating the Mahnar bus stand on the basis of that letter. The enforceability of the interim order was made the personal responsibility of the Dist. Magistrate, Vaishali.

14. A supplementary affidavit was then filed on behalf of the Petitioner on 1.5.2003, alleging that despite the interim order of this Court, Respondent No. 7 was being allowed to operate the bus stand and to collect toll from vehicles. In

support of the assertion receipts issued in the name of Ranjana Pariwahan upto April 29 were enclosed as Annexure 22 series. Later on, in the affidavit filed on behalf of the Respondents, it was stated that Respondent No. 7 was restrained from collecting toll from the bus stand.

15. Three counter affidavits were filed in this case; one by the contesting Respondent No. 7, another on behalf of the District Magistrate, Vaishali and yet another on behalf of the North Bihar Regional Transport Authority.

16. In the counter affidavit of Respondent No. 7 reference was made to some earlier orders passed by this Court on the dispute regarding settlement of the Mahnar bus stand and it was stated that in the writ petition those earlier orders were suppressed and, therefore, the writ petition was not maintainable. I fail to see how the Petitioner can be accused of suppression of material facts and how the present writ petition can be held to be not maintainable. The earlier cases were not on issue coming in dispute in the case in hand and all that the earlier orders show is that attempts were being made from before to grab up the Mahnar bus stand.

17. The first case referred to in the counter affidavit of Respondent No. 7 is C.W.J.C. No. 1719 of 1997. That was disposed of by me by order, dated 19.4.1997 in that case the right to collect toll from the bus stand was earlier settled in favour of one Jawahar Prasad the Petitioner in the case. Later on, the Municipality issued an order abrogating the settlement made in his favour Jawahar Prasad then came to this Court seeking a direction to the officers of the Mahnar Municipality to restrain Respondent No. 4 (in that case) from operating a Bus and truck stand and from realizing tolls from the Bus and truck operators parking their vehicles in the stand. Respondent No. 4 in that case appeared and stated before the court that he never operated any bus stand and he never collected any tolls from any buses/trucks nor he intended to do so in future. That was the end of the matter in so far as he was concerned. On behalf of the Mahnar Municipality it was stated that earlier settlement in favour of Jawahar Prasad was made due to mistake. It was pointed out that under the Motor Vehicles Act a bus stand could be set-up only with the permission of the Transport Authority. The Municipality was, therefore, not competent to set-up or settle a bus stand in favour of anyone for want of the necessary permission from the Authority. When this fact was realised the settlement made in favour of Jawahar Prasad was cancelled and the Municipality was ready to refund the entire amount of settlement deposited by him. The writ petition was, therefore, dismissed after taking note of the stand of the municipality.

18. The second case referred to in the counter affidavit of Respondent No. 7 is C.W.J.C. No. 7969 of 2002. According to Respondent No. 7, it was filed by one Ravi Kumar who was one of the three persons who had offered their lands to the Municipality for setting up the bus stand. That writ petition was dismissed as withdrawn by order, dated 18.7.2002.

19. The third writ petition referred to in the counter affidavit is C.W.J.C. No. 8568 of 2002. It was filed as Public Interest Litigation by one Ahilya Devi who herself, was a Ward Councillor of Mahnar Nagar Panchayat and who claimed that she was duly authorized by the Chairman of the Nagar Panchayat to file this case. It appears that that case was filed at the beginning of the present dispute when the Nagai Panchayat was apprehending that a bus stand may be set up by the district administration at a place other than the one selected by the Nagar Panchayat. A bench of this Court, presided over by the Hon'ble the Chief Justice, declined to take up that case as public interest litigation but made certain observations that clearly supported the Panchayat's right to set up the bus stand. The relevant extract from the order, dated 29.7.2002 is as follows:

The court is not making any comment on this aspect neither the transport department nor the Collector of the district are before the court, at present But, where a bus stand, as a public utility service, will be located is without doubt any aspect in which the Nagar Panchayat is entitled to express its views which the authorities are obliged to consider. If the High Court were to interfere at the slightest opportunity every time, the elected members of the local bodies find the atmosphere on home ground a little difficult, it would not be conducive to the working of the local self government. The State authorities also have to recognize the aspects on which local bodies are entitled to participate in matters of planning. The only constraint of the local bodies will be that they cannot violate the law; neither can State Respondents. This is. a matter which should be dismissed within the Nagar Panchayat first so that the members can place their views on record and convey them to the State Respondents.

(emphasis added)

20. I fail to see how the three earlier orders passed by the court can be said to have any adverse effect on the claim of the Petitioner in the case in hand. It appears to me that unfounded and misconceived technical objections were sought to be raised by Respondent No. 7 since No. material points were available to her for resisting the Petitioner's claims on merits.

21. The District Magistrate, Vaishali similarly did not have anything to resist the claim of the Petitioner on merits. Therefore, in the counter affidavit filed on his behalf statement is made, that is plainly contrary to his own letter issued earlier in this matter. In paragraphs 4 and 5 of the counter affidavit it is stated as follows:

4. That vide letter No. 343 dated 30.3.2002 a proposal was sent to the Commissioner-com-Secretary, North Bihar Regional Transport Authority, Muzaffarpur for giving permission to Smt. Ranjana Rani to manage the bus stand at Mahnar as she has offered 15 Kathas 3 dhurs land of Plot Nos. 4671, 4676, 4645 and 4675 of Mahnar village. North Bihar Regional Transport Authority is competent authority to give permission for managing the bus stand vide Rule 191 of Motor Vehicle Rules, 1992.

5. That North Bihar Regional Transport Authority gave permission to Smt. Ranjana Rani for managing the bus stand.

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22. It is simply incorrect and wrong to say that by letter No. 343 dated 30.3.2002 the District Magistrate had sent the proposal for giving permission to Smt. Ranjana Rani to manage the bus stand at Mahnar. The aforesaid letter of the District Magistrate is at Annexure-12. It is referred to in this judgment earlier and the relevant passage from the letter is reproduced below:

Uprokta Prashtawit aawedan main Smt. Ranjana Rani Pati Amrendra Kumar Gram Sultanpur Thana Desri Zila Vaishali dawara bhumi Sambandhi Kagjat Khata Shankhya 1795 Kheshra Shnkhyia 4571 Rakwa 15 katha 5 dhur mauja mahnar diya gaya hai jo har dristikon se uchit pratit hota hai. Ishliye Smt. Ranjana Rani ke naam Prashtawit Bhumi par bus, taxi, maxi stand sanchalan ki anumati sarkari prabdhano ke antragat nagar panchayat, mahnar ko dene ke anushansha kiya jata hai.

(emphasis added)

23. The counter affidavit sworn by the Secretary North Bihar Regional Transport Authority and filed on behalf of the Authority, is equally worthless and without any substance. It appears to this Court that either the affidavit was filed mindlessly or worse, it contains deliberate mis-statement of facts. In the counter affidavit it is mechanically stated that the Authority was competent to grant permission for setting up the bus stand and it has deemed fit to grant permission to Respondent No. 7 after consultation "with such local body namely S.D.O. Mahnar Nagar Panchayat, Mahnar and the D.M. Vaishali, Vaishali". The statement was made in the counter affidavit without enclosing any supporting materials and hence, on 2.9.2003 the Government Advocate prayed for some time to produce the materials in support of the statement made in the affidavit. The court allowed him the time as prayed for but commenting upon the statement made in the counter affidavit made the following observation:

While granting time to the Govt. Advocate as prayed by him, this Court would like to point out one or two things. First, the Respondents seem to consider the Sub-divisional Officer, Mahnar and the Dist. Magistrate, Vaishali as local bodies. That appears to be the level of understanding of Respondents 5 and 6 and of the deponent of this affidavit who is Secretary, North Bihar Regional Transport Authority, Muzaffarpur.

24. As regards the question of any consideration and report from the Mahnar Nagar Panchayat, it is the very same Nagar Panchayat which is the Petitioner before this Court with the grievance that it has been illegally denied the right to set up and operate the Mahnar bus stand. This Court is, therefore, prima facie of the view that there was absolutely no report or any consideration within the meaning of Section 117 of the Motor Vehicles Act and this statement is made

either without understanding its import or with" a view to mislead the court. Nevertheless, the court will give time to the Govt. Advocate, as prayed for, to find out if there is any such report and if there be any such report, to produce the same before the court.

25. On the next dated (11.9.2003) the Government Advocate informed the court that he had not received any reply to his wireless message and on that date the hearing of the case was concluded.

26. In the facts and circumstances of the case the authority, particularly its Secretary, deserves a strong reprimand from the court.

27. The manner in which this case was conducted before the court gives rise to the suspicion that everything was not above board and permission was granted to Respondent No. 7, in preference to the Petitioner, in a malafide way. This Court is unable to see how the Authority could turn around in the face of all the materials and reports as indicated above and without any basis give permission to Respondent No. 7 in preference to the Petitioner Nagar. Panchayat at whose instance the whole process was initiated.

28. For the reasons discussed above, it is evident that the impugned orders as contained in Annexures-15 and 16 are completely bad and untenable in the eyes of law. The two orders along with all consequential orders/decisions/actions are accordingly set aside and the Regional Transport Authority is directed to reconsider the Petitioner's application for setting-up and operating the bus stand Taxi, Maxi, Jeep Commander stand at Mahnar. Having regard to the facts of this case it will be open to the Nagar Panchayat to select a suitable piece of land other than the one belonging to Respondent No. 7. This, the Nagar Panchayat can do on the basis of the old applications or by issuing a fresh public notice. The Nagar Panchayat may renew its application or may make a fresh, modified application within two months from today. The Regional Transport Authority will take a decision on that application in accordance with law and in the light of this judgment within six weeks of the receipt of the application. Till a final decision is taken on the application of the Nagar Panchayat the district administration shall control and maintain the bus stand at Mahnar and tolls, if any, shall be collected by the staff of the district administration till a final decision as directed above is taken by the Authority.

29. In the result, this writ petition is allowed. There will be no order as to costs.