
(2000) 02 PAT CK 0111

In the Patna High Court

Case No : C.W.J.C. No's. 8264 and 8265 of 1992

Sri Parimal and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Finance Act — Section 77(a)
Patna Municipal Corporation Act, 1951 — Section 196, 201

Citation : (2000) 2 BLJR 1335 : (2000) 2 PLJR 789

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—The questions involved in these cases are whether the District Magistrate, Patna, had jurisdiction to demolish the hoardings erected by the petitioners for their business activities pursuant to the agreement/leases with the District Board, Patna, as well as the Bihar State Road Transport Corporation (In short "Transport Corporation")?

2. Before considering the rival contentions of the parties, it would be apt to have a brief survey of some of the facts. Petitioners in both the cases, at the relevant time, were carrying on business of advertising agency, Petitioner in C.W.J.C. No. 8265 of 1992 was a lessee of the District Board for five years with effect from 1.4.1989 to 31.3.1994 whereas petitioner in C.W.J.C. No. 8264 of 1992 had taken a licence from the Transport Corporation for a period of 1.12.1991 to 30.11.1994 on payment of 5.5 lacs. According to the petitioners, in view of the provisions of the Bihar Finance Act, 1981 (Part II) (In short "the Finance Act"), they had obtained permission of the Sales Tax Department for fixing such hoardings and were also paying sales tax in terms of Rule 3 of the Bihar Advertisement Rules, 1982. Therefore, in case of any violation of the provisions of the Finance Act, the Commercial Taxes authorities were duly empowered u/s 77(a) of the Finance Act to take a suitable action. But, the District Magistrate had

no jurisdiction to interfere with their business and take steps for putting down such advertisement hoardings.

3. The petitioners have contended that on account of erection of the said hoardings, no hindrance had been caused to the smooth flow of traffic in any manner whatsoever. In fact, it has been contended that similar hoardings had been erected by the District Administration itself on the junction of Central Revenue building just by the side of the northern entrance of the gate of Patna High Court. Allegedly, the District Administration upon an order passed by the District Magistrate, Patna, demolished all the aforementioned hoardings purported to be in pursuance of a decision taken in a meeting held on 27.7.1991, minutes whereof is contained in Annexure-4. Therefore, in view of such illegal action on the part of the respondents, petitioners had suffered a huge loss.

4. The respondents, in their counter-affidavits, contended that the petitioners had violated the terms and conditions of the agreement. That apart, such hoardings were erected without prior approval of the district administration and the Municipal Corporation. Therefore, the district administration having found that such hoardings were illegally erected and were sufficient, to detract the attention of the motor vehicle drivers and pedestrians, took a decision to demolish such hoardings. It was further contended that ample opportunity was given to the petitioners by a notice published in the leading newspapers on 12/13th October, 1991 asking all the persons to remove such unauthorised hoardings. But the petitioners did not take any step. Hence, the district administration had no option but to demolish the same.

5. A counter-affidavit was also filed on behalf of the Transport Corporation (respondent No. 4) wherein it has supported the case of the petitioners. It has further been contended therein that similar hoardings have been put up in the premises of Hardings Park, Dak Bungalow Crossing, Revenue Building crossing and in the premises of Christ Church School next to bus1 stand but no action had been taken in relation to the said hoardings although the Commissioner of Division is the Chairman of the Trustee of Veer Kunwal Singh Park. It has been stated that all the hoardings had been dismantled without giving notice to Bihar State Road Transport Corporation, it has further been stated that no traffic hazard is caused on account of display of hoardings within the premises of Bankipur Bus Stand and hoardings are erected in bigger cities like Ahmedabad, Bombay and Delhi, and State Road Transport Corporations of those places have been using their bus shelters for display of advertisement and earning revenue through this media; It has been stated that the lands in question had been transferred by the State Government to the Road Transport Corporation and all the assets of the Road Transport Corporation were transferred to the Bihar Rajya Transport Corporation with effect from 1.5.1959.

6. On behalf of the District Board, however, a stand was taken that the advertisement hoardings were erected by the petitioners without obtaining permission of the District Engineer. That apart, the agreement with the

petitioners was no longer in existence since they had failed to deposit the amount of contract on the day fixed. Therefore, after expiry of such period, the possession of the petitioners over the land in question had become unauthorised.

7. In the premises of the facts noticed above, both the writ petitions, in fact, were previously disposed of by the judgment dated 14th May, 1993 delivered by a Division Bench of this Court. But, since there was difference of opinion between two learned Judges, these cases have been placed before me for hearing.

8. Mr. Janardan Prasad Singh, learned Counsel for the petitioners, contended that petitioners having been registered with the Sales Tax Department under the provisions of the Finance Act as well as Advertisement Rules, have a fundamental right to carry on their business and therefore, any restriction upon such right has to be held illegal and unreasonable. He contended that the respondents have wrongly taken shelter under the provisions prescribed under Sections 196 to 201 of the Patna Municipal Corporation Act, 1951 (hereinafter referred to as the ("Municipal Act")) to justify their malicious design for demolition of the hoardings. Because, the term prior permission to erect such hoardings to pay taxes in relation thereto as existing under Sections 196 to 201 of the Municipal Act, will be deemed have been repealed by Section 81 of the Finance Act and similar provisions, in their place, as Sections 62 to 80 were brought into effect. Therefore, from a bare perusal of these sections, it would appear that the district administration had no authority to demolish the hoardings forcefully.

9. He further contended that from a bare perusal of the aforesaid judgment of the Division Bench and different materials on record, it would appear that no provision either under the Motor Vehicles Act or Rules framed thereunder to impose restrictions on erection of hoardings was brought to the notice of the Court. An attempt was made while giving reference to certain recommendations of the Indian Road Congress but since such recommendations are not statutory in nature, therefore, not binding. Mr. Singh apart from what has been stated above also pointed out the counter-affidavit filed on behalf of the State Road Transport Corporation to support the claim of the petitioners that the land on which the hoardings were erected was, in fact, transferred by the Government to the Corporation. It was also accepted that the petitioners have erected the hoardings after obtaining due permission and lease, etc.

10. On behalf of the State, it was pointed out that from a bare perusal of the minutes of the meeting dated 27.9.1991, as contained in Annexure-4, it would appear that the said meeting was attended by the District Magistrate, Chief Executive Officer of the Corporation, Deputy Development Commissioner and Superintendent of Police, Traffic. All the authorities having examined that the petitioners had erected the hoardings without obtaining permission of the Municipal Corporation and the Superintendent of Police, Traffic, took the impugned decision for demolition.

11. On the other hand, learned Counsel for the petitioners contended that from a

bare reference to the minutes of the said meeting, it becomes absolutely clear that neither prior to taking any decision the petitioners were given any opportunity of being heard nor any of the authorities of the Transport Corporation was present in the meeting nor any notice was given to the District Board by the Transport Commissioner. It would further appear, even the Commissioner, Patna Division in his impugned order, as contained in Annexure-3, did not refer to any statutory provision to justify the decision of the district administration. He merely observed that maintenance of public safety and security is the responsibility of the District Magistrate and that cannot be served by making payment of taxes to the collecting agency. But, he failed to point out any provision whereby the District Magistrate was authorised to demolish the structures/hoardings erected on the land of the District Board as well as the Transport Corporation.

12. From the facts noticed above, there is no doubt that the respondents have accepted that the petitioners after obtaining leases/licences from the District Board as well as the Transport Corporation, and due permission as required under the Finance Act as well as the Advertisement Rules, had erected the hoardings in question. Even the Commissioner, as would appear from his order contained in Annexure-3, accepted that the Transport Corporation had entered into an agreement with the petitioners relating to erection of hoardings. He also accepted that the land in question was leased out with the respondent-Transport Corporation for use of Bus Stand. But according to him, since the District Magistrate was the representative of the State Government, therefore, he had every right to take suitable decision for smooth traffic plan in the town.

13. Unfortunately, while taking such a decision the learned Commissioner could not point out any provision whereby such authority had vested with the District Magistrate save and except that the petitioners had erected hoardings without getting approval and permission of the Municipal Corporation as required under the provisions of Sections 196 to 201 of the Municipal Act.

14. I have already indicated that no provision whatsoever was brought to the notice of the Court or any provisions of the Motor Vehicles Act, 1988 or any other statute, under which prior permission of the district administration is requested before erection of the hoardings. Such provision, however, undoubtedly existed under Sections 196 and 197 of the Municipal Act. In this regard, a bare reference to the provisions of Section 196 of the Municipal Act would indicate that tax shall be levied upon every person who erects exhibits, fixes or retains upon or over any land, building, wall, hoardings or structures any advertisement or who displays any advertisement to public view in any manner whatsoever in any place where public or private shall pay advertisement tax at the rate prescribed by the municipal authorities. The words "levy of taxes" u/s 196 of the Municipal Act mean the rate of tax and the manner in which this tax has to be established to be determined by the Corporation with the approval of the State Government. This Section, therefore, imposes a liability on any person to pay tax when it has been determined by the municipal authority at the rate and manner approved by

the State Government after granting exemption, etc.

15. Section 197 of the Municipal Act, which is in para materia to Section 66 of the Finance Act can be noticed hereunder:

Prohibition of advertisements without written permission of the Chief Executive Officer.-(1) No advertisement shall, after the levy of tax u/s 196 has been determined upon by the Corporation, be erected, exhibited, fixed or retained upon or over any land, building, wall, holding or structure within Patna or shall be displayed in any manner whatsoever in any place without the written permission of the Chief Executive Officer.

(2) The Chief Executive Officer shall not grant such permission if-(i) the advertisement contravenes any bye-law made by the Corporation in this behalf; (ii) the tax, if any, due in respect of the advertisement has not been paid. (3) Subject to the provisions of Sub-section (2), in the case of an advertisement liable to the advertisement tax, the Chief Executive Officer shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission; Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway company relating to the business of railway company.

On the close scrutiny of the aforesaid provision, it is thus apparent that "permission" of the Chief Executive Officer is required to be obtained only after determination of the tax by the Corporation under, the provisions of Section 196 of the Municipal Act. Undisputedly, in this case no tax of the leasehold property as required u/s 196 of the Municipal Act was levied, therefore, one can safely urge that permission as required u/s 197 of the Municipal Act was not binding.

16. That apart, it has also to be remembered that by virtue of Section 81 of the Finance Act, the provisions of levy of tax on an advertisement hoarding under the Municipal Act or any other enactment in force were repealed. Sections 62 to 81 of Part II of the abovementioned Act deals with the provisions for requirement to levy tax on hoardings as also provision to grant permission for erection of such hoardings. To elucidate in a convenient manner, it would be apt to notice the provisions of Section 62 of the Finance Act in extenso:

Section 62 is the interpretation clause. Clause (a) of the said provision reads thus:

"Advertisement" includes any erection, fixation, announcement, display, exhibition, publication or communication of an object, matter or thing, whether made temporarily or retained in any manner with a view to attract public attention, for furtherance of any trade, commerce or service offered, but excludes advertisements published in a "newspaper" or broadcast by radio or television-and any advertisement exhibited or broadcast by any political party.

Section 63 of the said Act provides for levy of tax. The explanation appended to

the said provisions reads thus:

"The expression" sky sign" in this section means any advertisement, supported on or attached to any post, pole, standard, framework or other support wholly or in part upon any land, building, wall or structure including any movable board on which, of any part of which is visible against the sky from some point in any public place and includes all and every part of any such post, pole, standard framework or other support and includes any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement upon or over any land, building or structure upon or over any public place, which is open to the use of public other actually used or enjoyed or not as such-by. the public but shall not include (a) any flagstaff, pole, vane or weathercock unless adopted or used wholly or in part for the purpose of any advertisement, or (b) any advertisement relating to the name of the land or building upon or over which the advertisement is exhibited or to the name of the owner or occupier of such land or building; or (c) any notice of land or building to be sold, or let, placed upon such land or building.

Section 66 of the Act which immaterial for the purpose of this provision reads thus:

Prohibition of advertisement without permission of the prescribed authority.-(1) On and from, the date of commencement of this part, no advertisement liable to levy of tax u/s 63, shall be made, erected, exhibited, fixed, retained, announced, published, printed, or displayed in any manner at any place within the State of Bihar without obtaining the written permission of the prescribed authority and in the prescribed manner. (2) The prescribed authority shall not grant such permission if the tax, if any, due in respect of the advertisement has not been paid. (3) The prescribed authority shall, subject to provisions of Sub-section (2) in the case of an advertisement liable to tax u/s 63, grant permission for the period to which the payment of tax relates.

From a plain reading of the provisions noticed above as well as provisions of the Municipal Act, as defined under Sections 196 to 201 this thus clear that no permission was required to be obtained from the authorities of the Municipal Corporation in view of the introduction of the Finance Act.

17. Admittedly, in this case, the petitioners had obtained prior permission from the Commercial Tax authority and had also paid advertisement tax from time to time. Therefore, if there was any violation of the terms and conditions, remedies were already available under the Finance Act. But, the district administration for such violation, if any, would not be competent to take any action. Because, from a bare reference to the provisions of the Section 66 of the Finance Act, it would appear that no advertisement liable to levy or otherwise u/s 63 of the said Act shall be erected, etc. without obtaining written permission of the prescribed authority under the said Act. Therefore, there cannot be any doubt that levy of tax or any liability determined with regard to levy of tax as contemplated u/s 197

of the Municipal Act and liable to levy of tax as contemplated u/s 66 of the Finance Act cannot be equated together. Because Section 197 can only come into play after the fulfillment of this condition precedent namely "levy of tax" u/s 196 of the said Act as determined by the Corporation. The question to obtain permission from the Chief Executive Officer would not arise unless tax has been levied u/s 196. Therefore, it would not be open to contend that the provisions relating to obtaining permission in writing from the Chief Executive Officer was not repealed by reason of Section 81 of the Finance Act.

18. It is now well known that a statute which imposes a tax, penalty or restriction upon fundamental rights of a citizen must be construed strictly. A person must, therefore, be clearly told as to what he has to do under a statute and what not to do. It is now well known that if a latter statute again describes an offence created by an earlier statute and imposes a different punishment or varies the procedure the earlier statute is repealed by necessary implication.

The same principle is applied to levy of tax at an enhanced rate by a different authority under a latter enactment (see Principles of Statutory Interpretation by G.P. Singh, 4th Edition page 352-253).

19. It is thus obvious that Part II of the Finance Act, 1982 is a comprehensive Code by itself. Where by reason of insertion a complete Code is included by repealing similar provisions contained in some other Act all the relevant provisions must be held to have been repealed inasmuch as in terms of the new statute new rights and liabilities are created by the later Act. The repealing provision has to be read in such a manner so as not to allow the destruction of the object for which the new Act has been enacted. When the object is to repeal only a portion of an Act, word "shall be omitted" are normally used. Further Bihar Finance Act, 1981 is a Special Statute; whereas Patna Municipal Corporation Act was a general statute relating to imposition of Advertisement Tax. Thus, even the doctrine of "Generalia Specilibus Non derogant" would apply in this case. See *Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*, .

20. It is now well known that the Legislature intends to do justice and avoid injustice and inconvenience. Unless the language used in a provision of statute is absolutely clear, statute should be construed in such a way so that it would not cause any inconvenience to citizens. Reference in this connection may be made to the decision of the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . In such a case, the Court may also be inclined to hold that earlier Act altogether may not have been expressly repealed has been repealed by necessary implication. It has been held as follows:

The rule of construction is that where a statute provides in express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such earlier Act, the latter may be treated as repealed. Even where the latter Act does not contain such express words, if the co-existence of the two sets of provisions

is destructive of the object with which the latter Act was passed, the Court would treat the earlier provision as impliedly repealed. A latter Act which confers a new right would repeal an earlier right if the fact of the two rights co-existing together produces inconvenience, for in such a case it is legitimate to infer that the Legislature did not intend such a consequences. If the two Acts are general enactments and the latter of the two is couched in negative terms, the inference would be that the earlier one was impliedly repealed. Even if the latter statute is in affirmative terms it is often found to involve that negative which makes it fatal to the earlier enactment.

Section 66 of the Bihar Finance Act is also couched in negative terms.

21. Therefore, from a close scrutiny of all the relevant materials brought on record and the legislative intent of different provisions, I am in full agreement with Brother Sinha, J. that the district administration had no jurisdiction to take steps for demolition of hoardings. If at all there were any violations of the provisions of the Finance Act, remedies are already prescribed under that Act itself.

22. But, while coming to the case of the petitioner of C.W.J.C. No. 8265 of 1992, it would appear from the counter-affidavit filed on behalf of the District Board that no permission of the District Engineer, Patna District Board, as required under the terms of the agreement was ever obtained. The hoarding was also required to be displayed under the direction of the District Engineer, in paragraphs, 8, 10, 12, 15, and 16 of the counter-affidavit filed on behalf of the District Board, it was specifically mentioned that the petitioner had violated the terms and conditions of the agreement and had erected the hoardings without prior permission. It was further pointed out in paragraph 8 of the counter-affidavit that as per the terms of the agreement, the petitioner had to pay full consideration of the lease amount of Rs. 1,49,000 and odd for the year 1991-92 on or before 15.4.1991. But, only Rs. 49,442,50 was deposited. The petitioner, therefore, had violated the terms of the agreement. It further appears from the counter-affidavit as well as agreement in question that there was specific condition that no hoarding shall be erected above the electric pole and wire. But, the petitioner having violated all the norms and conditions of the agreement had erected the hoarding.

23. No reply has been filed by the petitioner controverting the facts as alleged in the counter-affidavit. Apart from the aforesaid from a bare reference to different conditions of the agreement, a copy of which is Annexure-21 to the writ petition, it would appear that prior permission of the District Engineer for erection of the hoarding was a must. There was also a stipulation that the display of the Board will be erected in such a way that it should not make traffic congestion problem or is hazardous to pedestrians. The height of the Board was not to be placed 30 ft, in any case from the ground level. Condition No. 7 of the agreement further indicates that in case of any dispute between the parties with regard to breach of any of the conditions of the agreement, the decision of the Deputy Development

Commissioner-cum-Chief Executive Officer-cum-Secretary of the District Board would be final and binding on the second party (petitioner).

24. In this regard, a reference can also be made to letters contained in Annexures IV and V to the counter-affidavit filed on behalf of the District Board from which it appears that from time to time requests were made to the petitioner to deposit the amount of Rs. 1,49,442 by the agreed date. But, that was not done.

25. Therefore, in my view, it is not a case of mere violation of the terms of the agreement but the very display of the hoardings without, the permission of the District Engineer of the District Board was wholly illegal and unauthorised. No document has been filed nor there was any averments before this Court that the prior permission of the District Engineer was obtained to erect the boarding on the land of the District Board. Therefore, I am constrained to hold that these petitioner has not approached this Court with clean hand. Thus, such conduct on the part of the petitioner does not entitle him to any relief under the writ jurisdiction. This position is well settled that when an applicant approaches a Court for a discriminatory and equitable relief, he must approach the Court with clean hands and must display utmost clarity; There must not be any misrepresentation of vital facts in the writ petition. Reference in this regard can be usefully made to a decision of the apex Court in the case of Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, and yet other case of Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, . Similar was the view taken by a Division Bench of this Court in the case of Baidyanath Mahto and Ors. v. The Agricultural Produce Market Committee and Anr. 1996 (2) PLJR 345.

26. Apart from the aforesaid, I am also reminded of the case of T.N. Rugmani and Another Vs. C. Achutha Menon and Others, where it was observed that even an assailable cause or illegal and arbitrary order may fail to move the conscience of the Court due to inequitable jurisdiction and unjustifiable behavior or conduct. Therefore, I have no hesitation in coming to the conclusion that the conduct of the petitioner in violating different terms and conditions stipulated in the agreement of the District Board and to erect the hoardings without permission of the District Engineer is itself sufficient not to grant any relief in writ jurisdiction. Therefore, I have no option but to dismiss the present writ application.

27. But, having regard to the facts of C.W.J.C. No. 8264 of 1992 as well as statutory requirements which I have noticed above, find myself in quite agreement with the views expressed by Brother Sinha, J. Accordingly, this writ application, viz., CM.J.C. No. 8264 of 1992 is allowed. Since the period of agreement with the Transport Corporation, has already expired, therefore, relief regarding putting up hoarding, etc. have become infructuous. Petitioner is, however, entitled to the damages from the respondents for which she can be at liberty to file a civil suit. But in the facts and circumstances of the case, the respondents are liable to pay a cost of Rs. 10,000 ten thousand in this case alone.