

(1997) 12 CAL CK 0024
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction G.A. No. 1911 of 1997 APO / T No. 300 of 1997

State of West Bengal and Others

APPELLANT

Vs

Smt. Tanwir Bano

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Calcutta Police Act, 1866 — Section 39
Constitution of India, 1950 — Article 226

Citation : (1998) 1 CALLT 339 : (1998) 79 FLR 588 : (1998) 1 ILR (Cal) 59

Hon'ble Judges : Prabha Shanker Mishra, C.J.;Nure Alam Chowdhury, J

Bench : Division Bench

Advocate : Mr. A. Biswas, Mr. H.P. Ghosh and Ms. R. Ghosh, for the Appellant;
Mr. P.K. Dutta and Mr. S.B. Chakraborty, for the Respondent

Judgement

P.S. Mishra, C.J.—This appeal under Clause 15 of the Letters Patent by the State and its Officers is preferred against the Judgment in a proceeding under Article 226 of the Constitution of India by a single Judge of this court holding in a petition by the petitioner/respondent herein that the order of the Commissioner of Police, Calcutta, refusing to renew the licence u/s 39 of the Calcutta Police Act, 1866 is not valid and, consequentially, directing the Commissioner of Police to pass a fresh order after supplying a copy of the reports that were used for refusing to renew the licence.

2. That some orders have been passed against the petitioner/respondent by which she has been denied the renewal of licence on the basis of some materials which were not furnished to her, ex-facie would appear to be violative of principles of natural Justice. It would be too late in the day for any person to say that while exercising power u/s 39 of the Police Act, 1866, the Commissioner of Police was not exercising a quasi Judicial power. Since the Commissioner of Police exercised a quasi judicial power even if there has been no such specific Rule that before refusing to renew the licence opportunity of being heard would be afforded to the affected party, such opportunity had to be provided as one of the

most eminent cardinal principles of natural justice. It so happened in the case of the petitioner/respondent at the first instance. When without affording such opportunity to her the Commissioner of Police communicated the order declining to renew the licence, the petitioner/respondent advisedly moved this court in W.P. No. 2238 of 1995. The learned single Judge of this court allowed the said petition and directed the Commissioner of Police to give an opportunity of being heard to the petitioner/ respondent. The impugned order has been passed after affording such opportunity.

3. This time, however, natural Justice, it is alleged, is violated because the Commissioner of Police has placed reliance upon reports, copies of which were not furnished to the petitioner/respondent. To be precise, one may refer to the order of the Commissioner of Police which is impugned in the writ petition wherein it is mentioned, inter alia, that pursuant to the order in W.P. No. 2238 of 1995 an opportunity was afforded to the petitioner/respondent and she appeared through a learned Advocate who submitted an affidavit stating that she had nothing to say more than what is said in the affidavit dated 4.10.96. It is said in the order of the Commissioner of Police thereafter:--"However, on being questioned, she stated that no Trade Licence and Health Licence were issued to her by CMC. Authorities to run the Hotel "Moghal Darbar" at 42A, Mirza Ghalib Street, Calcutta. The affidavit dated 4.10.96 and the affidavit dated 3.8.95 (annexure 3 of the writ petition) were carefully perused and contents noted. Whatever she has stated in the affidavit dated 4.10.96 do not corroborate with the enquiry reports of the Police Officers.

4. It appears from the reports that though the Hotel Moghal Darbar at 42A, Mirza Ghalib Street, Calcutta-16, remains closed, the anti-social elements are coming there. Practically the Hotel Moghal Darbar was a den of anti-socials before the arrest of Rashid Khan in bomb blast case. Immediately after the arrest of Rashid Khan, they scattered away for some period. They are reappearing in the vicinity and making chaos in the locality. In the circumstances, if the Hotel Moghal Darbar was allowed to be opened there is every chance of further deterioration of law and order problem, in the locality. This calls for action u/s 39 of the Calcutta Police Act. 1866.

5. In view of the aforesaid aspects, the licence to run the Hotel Moghal Darbar at 42A, Mirza Chalib Street, Calcutta-16, is hereby cancelled u/s 39 of the Calcutta Police Act, 1866. No further renewal of the police licence will be allowed".

6. The learned single Judge has. however, accepted the plea of the petitioner/respondent and ordered on the ground as mentioned above that, as stated by him, it does not appear that a copy of the enquiry report was supplied to the petitioner in order to enable it to refute the contents thereof. In this view of the matter, the Impugned order cannot be sustained.

7. The above, in our view, has proceeded on a mis-reading of the reports that are mentioned in the order of Commissioner of Police. The reports mentioned

therein evidently are not of any enquiry that the Commissioner of Police had instituted for the purpose of deciding whether licence be renewed or be refused. The reports aforementioned are filed by the police while discharging duty for various purposes under the Calcutta Police Act and are maintained in a routine manner and are looked into in every case where issues of public order and/or law and order are involved. Section 39 of the Calcutta Police Act, 1866 reads as follows:--

"The licence for securing the good behaviour of the keepers of the said houses or places of public resort or entertainment is circumscribed by the proviso aforequoted which says, for reasons to be recorded in writing the Commissioner of Police can refuse to grant any licence that-

1) the Character of antecedents of the applicant for such licence or the nature of the trade or calling for such licence: or

2) the location of the house or place of public resort and entertainment in respect of which licence is required is unsuitable for the grant of such licence on the ground of congestion of traffic, want of adequate space for parking vehicles or difficulty in maintaining public peace, order or safety or any other similar grounds."

8. There is no denial to the fact that Raslild Khan, a bomb blast case accused, was arrested. He, it is said, regularly visited the premises of Hotel Moghal Darbar at 42A. Mirza Chalb Street, Calcutta-16. There were reports that anti-social elements used Hotel Moghal Darbar as a den before the arrest of Rashid Khan in bomb blast case. There is further report that "immediately after the arrest of Rashid Khan such anti-social elements scattered away for some period but they are reappearing in the vicinity and are making chaos in the locality."

9. The reasons assigned for refusing the licence is that "If the Hotel Moghal Darbar was allowed to be opened, there is every chance of further deterioration of law and order problem in that locality." On the facts as above it cannot be said that the petitioner/respondent has not been heard at all. Right of hearing ordinarily shall take into its fold the Rule that all such materials be furnished or at least contents of such reports and documents be made known which are likely to be used and if used the order is likely to go against the person who is required to be heard.

10. Concept of natural justice, however, is variable and in every case it cannot be said that all facets of natural Justice must be compiled with: whereas in a case where no opportunity was afforded at all it can be said that the proceeding is void ab initio. When such opportunity is afforded but in course of the proceedings some procedural error has occurred, such facet if it is violated can be cured by direction to meet the requirements to the extent necessary. While in a case where no opportunity was afforded at all, the proceeding can be called without jurisdiction In the case where one of the facts as above is said to have been violated it would be necessary to examine whether any serious prejudice has

been caused to the person who was required to be heard. When we test the case of the petitioner/ respondent on the above touchstone, we are of the considered view that Intelligence reports or the reports of surveillance are mostly of secret and confidential nature. They do not contain merely a reference to a certain happening or incident, but many sensitive information are entered into them. A disclosure of such report sometimes may be more prejudicial to the interest of public than the interest of the individual whose freedom of trade and business is affected.

11. The learned counsel for the petitioner/respondent has based his contentions upon the Judgment of the Supreme Court In the case of North Bihar Agency and Others Vs. State of Bihar and Others, and urged that when additional materials, namely. when the reports were used by the Commissioner of Police on the basis of which the licence has been refused, it is obvious that serious prejudice has been caused to the petitioner/respondent. According to the learned Counsel, unless the reports were made available, the petitioner/respondent cannot show that she has no such antecedents and/or that she has no association with any such anti-social elements. He has relied also upon the principle stated in the Judgment of the Supreme Court in the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and in the case of Enuga Lakshamma Vs. Vennapuse Chinna Malla Reddy (Dead) by Lrs., and in a judgment of the Gujarat High Court reported in 1991(5G) ELT 15 in the case of Shree Rama Packaging v. Union of India for proposition that violation of principles of natural justice does result in miscarriage of justice. Principles as stated in those judgments as we have ourselves noticed earlier are salutary and have to be observed. They do not, however. In any manner go against the well known principle that natural Justice requirements vary from fact to fact and case to case. A wise approach which shall balance the interest of the individual on the one hand and protect the public interest on the other is always necessary. The commissioner of Police has stated the cause of public Interest to refuse the renewal of licence. is the injury caused to the petitioner/respondent so serious that at the cost of public interest there should be renewal of license? No one if such a question arises would support the cause of Individual against the cause of the public at large. Coupled with the above, we have good reasons to hold that for the reasons of the maintenance of peace and public order or in that matter for the reasons of law and order if licence is refused it will be necessary to examine whether such a plea has been raised only to deny to the applicant a right that would follow the grant of licence.

12. The above-quoted provision u/s 39 of the Police Act takes notice of the character and the antecedents of the applicant and the location of the house or place. A person for the reason of antecedent may not be found suitable and licence may be refused to him or her. Even if the person is not unsuitable but the location of the house or place is not suitable licence can be refused. A person seeking the licence can undoubtedly speak about his or his antecedents. He or she, however, cannot speak of the suitability of the location against the reports

of the police.

13. A lot is said before us that a keeper of a place may not have any involvement with the activities of the persons who come and stay on payment. It has also been urged before us that there has never been any case of any unlawful activity of any person allegedly frequenting the Moghal Darbar Hotel. We do not propose to elaborate but cannot resist observing that agents and saboteurs who are engaging themselves in antisocial activities in different parts of the country shall always look for a safe place to stay and a willing keeper of a place can provide to such a person shelter in a locality which otherwise is safe. A keeper of a place can legalistically be Innocent to the extent that he or she is not personally engaged in any anti-social activities but the very fact that such anti-social elements find a shelter under his or her control, in our view, make the keeper of the place a suspect.

14. We have given our anxious thought whether the petitioner has been denied the licence for the reasons which cannot be said to be valid or whether the use of the reports without furnishing the copies thereof to the petitioner/respondent has caused such injury for which there should be interference by the court. We are of the considered view that no such prejudice is caused to the Interest of the petitioner. If a place which was used as a den of anti-social elements and which a bomb blast accused had been frequenting, by his reappearance in the vicinity and in the locality may cause serious alarm to the peace and tranquillity. Thus in our view, such a place is not suitable for any licence u/s 39 of the Calcutta Police Act. 1866.

15. The court's power under Article 226 of the Constitution of India is discretionary. Even if there is some infraction of legal right of a person and there is Injury which, ordinarily, the court would not Ignore and tend to rectify while exercising power under Article 226 of the Constitution of India, may not in a proper case be available. The court must see, when weighed against public interest it should be protected or not. In other words for the reasons of enquiry and public interest the court can decline to exercise its power under Article 226 of the Constitution. The instant case is one in which for the reasons of public Interest the court should decline to exercise its power. There is some argument before us that, in fact, the affidavit was received and hearing was given to the petitioner/ respondent by the Joint Commissioner of Police but the order has been passed by the Commissioner of Police. This, however, is of no consequence because nothing beyond the statements in the affidavits Is urged on behalf of the petitioner/respondent and the Commissioner of Police has considered the affidavit which the petitioner/respondent presented before the Commissioner of Police.

16. Having considered the matter and for the reasons aforementioned, we are of the opinion that the impugned Judgment is fit to be set aside. It is, accordingly, set aside and the writ petition is dismissed. Both the appeal and the application are thus disposed of but on the facts and in the circumstances of the case, there

shall be no order as to costs.

N. A. Chowdhury, J.—I agree.

2. Appeal disposed of