
(1981) 12 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 502 of 1981

Uattar Paria Brahmaputra Jala Paribahan Co-Operative
Society Ltd.

APPELLANT

Vs

Executive Engineer, Inland Water Transport Division, Ulubari,
Gauhati & Ors.

RESPONDENT

Date of Decision : 07-12-1981

Acts Referred:

Citation : (1982) 1 GLR 4

Hon'ble Judges : K.Lahiri, J and S.M.Ali, J

Bench : Division Bench

Advocate : P.C.Kataki, S.N.Medhi, A.K.Bhattacharyya, A.K.Das, B.Devi,
H.N.Sarma, J.P.Bhattacharjee, Advocates appearing for Parties

Judgement

Lahiri, J.—The authorities empowered to settle Ferryboats under the Northern India Ferries Act, 1978 and the Control and Management of Ferries Rules, 1968 are statutory authorities. They determine matters affecting "public interest". The subject matter of settlements are "ferryboats" for the public. The right to collect tolls are sold by "public tender" and they are settled by "public authority". Therefore, it is a public duty of the public servants to "act fairly and reasonably". Naturally, the procedure for settlement must be in consonance with the norms of "procedural fairness". The combusive effect of the nature of the right, the manner of disposal of tenders, the nature and character of the power conferred aid the duties imposed on the authorities under "the Act" and "the Rules" are so articulated that it is obvious that they obligate the selling authorities "to act fairly and quasijudicially". These are the submissions made by Mr. P.C. Kataki learned counsel for the petitioner while questioning the validity of the settlement made in favour of Respondent No. 2.

2. The new judicial trend is for procedural fairness; in all disciplines. The procedural fairness according to new jurisprudence is omnipresent in all decisionmaking bodies, At present it is unnecessary to label the proceedings

judicial, quasijudicial administrative, investigatory. We are tempted to quote the relevant statement of law laid down by Lord Justice Sachs in *Re Pergamon Press*, 1970 (3) All E.R. 525 (541543) :

"...it is...not necessary to label the proceedings "judicial" "quasijudicial/"administrative" "investigatory", it is the characteristics of the proceedings that matter, in the precise compartment or compartments into which they fall".

Of course, the new trend emerged in Britain with the House of Lords' decision in *Ridge vs. Baldwin* (1953) 2 WLR 935. The decision propounded that an authority may be required to observe the principles of natural justice even though the power exercised by it "is not ex facie of a judicial character". It was observed :

"from now on label consciousness and word worship may be less conspicuous features of administrative law in the courts.....".

In *Re H.K. (An Infant)* (1967) 2 WLR 962, it was observed :

"even though an administrative authority is not acting judicially it ought to act fairly (i.e. observe fair procedure). The notion of "fairness" in preference to the rules of natural justice is gaining general acceptance in England" In *R.V. Liverpool Corporation Ex parte Liverpool taxi fleet Assn.*, (1972) 2 Q.B. 299, *Maxwell vs. Deptt. for Trade and Industry* (1974) Q.B. 523, the principles have been reiterated.

3. The American Court in *Goldberg vs. Kelly*, 397 U.S. 254 (1970) extricated the courts from the restrictive cobweb of analytical concept that conferment of licenses or settlements, operating in the field inherently inimical to the public welfare, is not a right but a privilege. The Supreme Court of America in *Sugarman vs. Douglass*, 413 U.S. 634 (1973) held:

"this court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a right or as a privilege".

The privilegeright dichotomy is in the process of being completely eroded in America. In *Rajkumar Dilip Narayan Singha vs. Assam Board of Revenue and ors.* 1980 ILR Gauhati 99 one of us (Lahiri, J.) detailed the developments of the principles of fair play and observed as follows :

"...In India it is now settled, that it is a rule of administrative law which has been judicially evolved by the Supreme Court as a check" against arbitrary power by the executive authority. The State policy being for the attainment of socioeconomic justice, in every sphere of his activity an ordinary citizen comes into relationship or direct encounter with State power holders. The Government in our State, is the regulator and dispenser of almost all services and dispenser of a large number of benefits like jobs, contracts, licenses, quotas, and so forth. The "valuables" dispensed by the Government is the nation's wealth. It is true that the Government is free as a private individual in selecting recipient for its

largess. But the Government is still the Government and must be subject to restraints. Democratic Government cannot lay down arbitrary and capricious norms and standard for the choice of persons. Even in the matter of granting licenses quotas or largess, the Government cannot act arbitrarily as it pleases. It must act within certain bounds, structured by rational, relevant and nondiscriminatory standard Any departure from such norm would be liable to be struck down unless it is shown that the act was not arbitrary but was based on valid principles "

The quaint essence of the judicial pronouncement of the Supreme Court after *Ramana Dayaram Shetty vs. International Airport Authority of India* AIR 1979 SC 1628 in the field of administrative law is that in administrative action may be held to be subject to the requirement of natural justice, because either it affects rights of interest or it may be simply held that it automatically involves a duty "to act fairly" and in accordance with natural justice. It has been held in *Ramana* (supra) that the challenge against an order being violative of the principles of natural justice or failure to act fairly can be supported apart from Article 14. It has been thus observed by Bhagwati J. :

"It has an independent existence apart from Article 14 , It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority" (Emphasis added).

4. Counsel for the parties do not dispute the correctness of the propositions of law. The only question is whether in the instant case the statutory public authorities have acted fairly in leaving out of consideration the tender submitted by the petitioner

5. The petitioner is a registered Cooperative Society under the Assam Cooperative Societies Act and its members belong to the "Listed Classes". Respondent No. 1 issued a notice inviting tenders for settlement of Ferry styled as Dibru Sonati Burisuti Ferry for the period from 1.4.81 to 31.12.82. Indeed there was a clause in the Tender Notice reading "the tenders will be received up to 12 noon of 27th February 81 in the office of the undersigned and will be opened on the same day and hour. The tenders or their authorised agents/representatives may be present at the time of opening of tenders". (Emphasis added)

There are some clauses which provided that the tender would not be accepted on failure to comply with certain terms, however, there is nothing to show that submission of tender beyond 12 noon would be rejected. There was no direction in the Tender Notice that the tenders were required to be put in any box. The petitioner claims that upon fulfilment of all the conditions it submitted its tender offering Rs. 6 lakhs through Shri Lakshmidhar Bora Deori but he was not allowed by Respondent No. 1 to put the tender in the Tender Box on the ground that he was late by 5 minutes and Respondent No. 1 made an endorsement on the envelope that the same had been received by him at 12.05 P.M. Interestingly, as required under the Tender Notice the presence of the tenderers/their authorised

agents/representatives was recorded by Shri P. K. Banerjee, Executive Engineer (Respondent No. 1) thus :

"the following" persons are present at the time of opening Ferry Tenders at 12.00 noon on 27th February, 1981 :

* * * * *

6. Sd/

Lakshmidhar Bora Deori This shows that Shri Lakshmidhar Bora Deori, Secretary of the petitioner society was shown present at 12.00 noon either as the tenderer or agent or representative. The said Lakshmidhar Bora Deori has made a sworn statement before us that he wanted to present the tender in the box shown to him at 1155 P.M. but his tender was received by Respondent No. 1 who did not allow him to put it in the box. Interestingly, Shri P. K. Banerjee, Executive Engineer has not filed any affidavit countering the statements made by Shri Deori that he had presented the tender 5 minutes before the deadline. No explanation has been offered by the respondents as to why the Executive Engineer who had personal knowledge could not counter the allegations. From contemporaneous documents namely, Annexure "A" it clearly appears that Shri Deori was recorded as an authorised person present at 12 noon. Therefore, the Executive Engineer's own admission as to the status of Shri Deori as representative of the tenderer is well established by Annexure "A". It follows, therefore, that the tender of the petitioner had been received by the Executive Engineer before 12 noon. Surely Shri Deori did not present himself at 12 noon to show his face but with a definite purpose. Either he had the tender with him or he had presented the tender. So his presence was recorded by Respondent No. 1 as a tenderer/representative/agent. There is no way but to conclude that the tender of the petitioner was submitted "in the office of the Executive Engineer by 12 noon of 27th Feb. '81". Annexure "A" clearly shows that the tender was submitted by the petitioner before 12 noon. It must have been received in the office of the Executive Engineer prior to 12 noon but the Executive Engineer might have personally received it at 12.05 P.M. and recorded the time. There is no averment that the petitioner's tender was written and the figure of Rs. 6 lakhs was put in after Shri Deori had seen the offers made by the other tenderers. There is no averment made that the petitioner did not come with the tender in the office of the Executive Engineer (Respondent No. 1) for depositing the same. Admittedly the office of the Executive Engineer was responsible for the delay caused to the petitioner, if there was any, in prescribing a new rule of putting the tenders in the Tender Box. This condition was not there in the tender Notice. Therefore, by a selfcreated rule of putting the tenders in a Tender Box, without intimating the same to the petitioner, the respondents cannot throw out the claims of the petitioner, even if there was a slight delay in putting the tender in the "box". In our opinion, the Tender Notice should have clearly indicated about the positive place for judgment of tenders, it should not have been left to the arbitrary discretion of the authority to defeat the claims of the tenderers. In

any view of the matter, the Executive Engineer should have accepted the tender, opened the same, and, should have recorded the offer made with an endorsement why the offer could not be accepted by him. The comparative statement was prepared as late as on 7.3.81 but the name of the petitioner and his offer are conspicuously absent in the statement. The least that should have been done was to open the tender of the petitioner, record the offer being about 50 thousand more than Respondent No. 2. Respondent No. 1 should have recorded the reasons for nonconsideration of the tender, if any and left it to the settling authority to decide the validity of the tender. In our opinion, fair play in the administrative as well as quasijudicial action was conspicuously absent in the instant case in so far as the petitioner was concerned.

6. For the foregoing reasons we have no hesitation to conclude that absolute nonconsideration of the tender by the authorities was unfair and unjust and the impugned order of settlement is illegal. In the true tradition of the Bar the learned Advocate General, Nagaland also submitted that the petitioner ought to have been fairly treated on the facts and circumstances of the case but at the same time learned Advocate General has very rightly submitted that dispensation of justice should be to uphold the cause for justice to all and the cause of justice shall not be upheld in the public interest to declare the order of settlement as void and to quash the order of settlement. It would create chaos and mismanagement in running of the Ferryboat, a public conveyance. Further, the learned Advocate General submits that Respondent No. 2 is running the Ferry to the satisfaction of all, it is a shortterm lease and Respondent No. 2 has invested over a lakh of rupees and he should not be penalised for the remiss. The learned Counsel prays to mould the relief to meet the ends of justice according to the factsituation of the case. The contention has a strong force.

7. While dispensing justice some balancing is needed by the Court and the Court system must mould and project relief based on "fair play according to law". If we declare the entire order as void it would cause sufferance to the public. The authorities connected with the settlement would be inconvenienced. It is necessary to protect "jus public" as the effect of declaration that the impugned order is void would fall heavily on the public exchequer and would adversely affect public interest. Respondent No. 2 would draw the benefit and might ask for damages for the loss and ultimately the members of the public shall have to pay.

8. In *Maneka Gandhi AIR 1978 SC 597* (sic) "declined to make a consequential order". In a plethora of cases their Lordships have refused to grant instant consequential order to avoid administrative crisis or paralysis or other causes which might adversely affect public interest. Further, it cannot be overruled that the authorities can take the same action again by removing the deficiency of nonconsideration of the tender of the petitioner. In *S. L. Kapoor AIR 1981 SC 136* after holding the order to be invalid, their Lordships expressed anxiety that if the Municipality was to be reinstated "it may lead to confusion and even chaos in the affairs of the Municipality?". However in that case the Supreme Court was relieved

of its anxiety in view of the appellant not pressing for such an order. In *Swadeshi Cotton Mills AIR 1981 SC 818* the Supreme Court held that there was violation of the principles of natural justice but refused to quash the order of "takeover" but directed the Government to give "full, fair and effective hearing" to the undertaking within 3 months. The consideration for such a course of action appears to be that it would have created confusion and chaos if the undertaking was handed back to the owner and if after hearing the Government would have again passed "an order of takeover".

9. Therefore, considering the facts and circumstances of the case we do not quash the order but direct Respondent No. 1 to consider the tender of the petitioner along with the other tenders within 1 month and 15 days from today. He shall make such just and proper order as it may deem fit. Learned counsel for Respondent No. 2 has very rightly contended that the authority should also take into consideration that (1) the term is going to expire by 31.3.82 ; (ii) whether public interest will be upheld in settling the ferry with any person other than Respondent No. 2 ; (iii) Respondent No. 2 had worked out the period and invested large amount for running the Ferry. Undoubtedly, these will be relevant considerations while considering the tenders of the parties.

In the result, we hold that the impugned order was violative of the principles of natural justice. However we maintain the "status quo" and direct Respondent No. 1 to consider the tender of the petitioner along with other tenders and dispose of the question of settlement within 1 (one) month and 15 (fifteen) days from today. We make it clear that Respondent No. 2 shall continue to run the ferry on the terms and conditions of settlement until a fresh order is made. If the order is in favour of Respondent No. 2, the settlement shall be treated as a settlement in continuation of the previous settlement made in his favour by the authorities.

The petition is allowed to the extent indicated above. There is no order as to cost. Send down the records forthwith.