
(1995) 02 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4109 of 1994

Vijay Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0045

Final Decision : Allowed

Judgement

B.L. Yadav, J.—Whether the Petitioner lessee for a period of three years, as pisciculturist (since 1993 to 1996) for rearing fish under Mallikpur Branch Canal, was entitled to the benefit of principle of natural justice and entitled to the benefit of the Doctrine of Legitimate Expectation under the circumstances of the instant case are the short questions for determination in the present writ petition filed by the Petitioner under Articles 226/227 of the Constitution, seeking the relief to quash the order dated the 5th of February, 1994 (Annexure 4) canceling the lease without any opportunity of show cause/hearing.

2. The essential facts are these. The Petitioner, being highest bidder of an auction sale, obtained a lease and after complying with all the formalities in pursuance of letter No. 264/Goraul dated the 7th of August, 1993 issued under the signature of the S.D.O., Tirhut Canal Sub-division No. 1, Goraul, deposited the entire required auction sale and other amounts and started fishing after having invested a handsome amount. Approval of the higher officials including the Executive Engineer, Tirhut Canal Division was also obtained. Earlier he had received a certificate of being the highest bidder vide Annexure 2 and was required to deposit a sum of Rs. 16,200/- and Rs. 40,701/-. After the receipt was obtained and the amount was deposited, as required, the Petitioner started fishing operation in the ditches in question. The Petitioner also made purchases for a sum of Rs. 27,130/- on 15.10.1993, Rs. 37,080/- on 18.10.93 and Rs. 35,460/- on 22.10.1993 for developing the ditches settled in his favour, as contained in Annexure 3 to this petition. Investment was made particularly for

purchase of pisci-fauna, fish-seeds. Additional huge amount for investment by way of labour cost etc. was also made by the Petitioner.

3. It is needless to say that it takes about six months for pisci-fauna to grow. By the time the Petitioner was expecting the outcome after investment of a huge amount, he learnt that the settlement made in his favour on the basis of public auction held on 3.9.1993, has been cancelled without any notice for representation and without affording any opportunity for hearing, when in fact the Petitioner was legitimately expecting that in case his lease per chance is sought to be cancelled even after having complied with all the formalities and also being highest bidder, having invested a handsome amount, he would be afforded an opportunity of hearing. But nothing was done and by the impugned order dated 5.2.1994 (Annexure 4) the Petitioner's lease for three years was cancelled.

4. A counter affidavit was filed and the averments in the petition, including that the Petitioner must be entitled to hearing in compliance with the principles of natural justice and to the Doctrine of Legitimate Expectation were denied.

5. The learned Counsel for the Petitioner contended that by grant of lease in favour of the Petitioner, a legal right was created in his favour to continue to operate for a period of three years. He has invested a huge amount and deposited the requisite sale amount and other amounts, but without any notice for representation or any opportunity of hearing the lease deed has been illegally cancelled. In such matters the Petitioner expects that some notice would be given to him and some explanations in respect of some assumed irregularity would be asked from him and he would be afforded an opportunity of hearing before the lease was cancelled but nothing was done. All of a sudden he received the impugned order of cancellation. It was arbitrary and violative of the rules of natural justice. In any case he being the highest bidder, obtained the lease after complying with all the formalities and was legitimately expecting to be heard and informed about the process of cancellation, but nothing was done. The learned Counsel leaned heavily on a Full Bench decision of this Court in *Pancham Singh Vs. The State of Bihar and Others*

6. The learned Counsel for the Respondents, including the State, on the other hand, urged that the principles of natural justice are not a strait-jacket formula nor it can be stretched too far. In the present case it was not required to be complied with. Similarly the Doctrine of Legitimate Expectation would not apply.

7. Having considered the submissions of both sides, the points for determination are whether on the facts and in the circumstances of the case the Petitioner was entitled to the principle of natural justice and to the benefit of Doctrine of Legitimate Expectation.

8. Apart from the rule of *Audi Alteram Partem*, which means that no one shall be condemned unheard, corollary of which is that he should be given reasonable notice of the nature of the case to be met, there are other rules of common law

to the same effect. (See *Franklin v. Minister, Town and Country Planning* 1948 A.C.C. 87 : (1947) 2 All E.R. 289 *John v. Rees* (1970) Chan. Div. 345). In case any person has acquired any right in any property or his right is being affected by the process, he would be afforded reasonable opportunity of hearing and also to meet the cause against him.

9. In *Cleveland v. Board of Education* (470) U.S. 532 ; 84 Law Ed 494 it was held-

An essential principle of due process is that a deprivation of life, liberty or property be preceded by notice and opportunity of hearing appropriate to the nature of the case (See *Mullane v. Central Hanover Bank and Trust Company* 339 U.S. 306 : 4 L.Ed. 865). It has been described that root requirement of the due process clause being that an individual be given an opportunity for hearing before he is deprived of any significant property or interest.

10. In *S.L. Kapoor v. Jag Mohan* 1981 S.C. 136 it was held that even where a statute is silent in respect of observance of this rule, it shall be read into the statute as an inbuilt provision. This rule must be held to be a necessary postulate in all the cases where a decision is to be taken affecting a person's right or interest, unless such rule is specifically excluded by the statute.

11. Natural justice is a concept which has succeeded in keeping arbitrary action of the State within limits. At the same time a Court has to be circumspect in deciding whether it can extend the rule. In the instant case it cannot be said to be a strait-jacket formula nor it can be stretched too far. However, it has significant place in modern administrative law. In other words it is Substantially fair play in action. (See *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, It was held by the Apex Court that the principles of natural justice constitute the basic elements of a fair hearing, having their roots in the innate sense of men for fair play and justice which is not the reserve of any particular race or country but, is shared in common by all men. (See *Union of India and Another Vs. Tulsiram Patel and Others*,

12. By grant of lease in favour of the Petitioner, who was highest bidder, who deposited the entire required amount and other amount or installment, as required by the relevant rules, and also invested handsome amount for rearing fish, he never expected that his lease would be cancelled without affording any opportunity of hearing and without serving any notice upon him. But by the impugned order it is crystal clear that before canceling the lease in question no notice was served on the Petitioner nor he was afforded any opportunity of hearing nor he was actually heard. The principles of natural justice constitute the basic element of a fair hearing. As the Petitioner was being deprived of the significant property right or an interest therein, hence compliance of the principles of natural justice, in my opinion, was a must.

13. In that view of the matter, in my opinion, the impugned order of cancellation of lease deed in favour of the Petitioner for a period of three years has been

rendered in utter violation of the principles of natural justice.

14. As regards the second point about the Doctrine of Legitimate Expectation, and its concept and applicability it is better to quote the statement of law from the Halsbury Laws of England (4th Edition) Volume I (1) 151 as follows:

A person may have legitimate expectation of being treated in a certain way by an administrative authority, even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or from consistent past practice. In common parlance it means that the authority ought not to act so as to defeat the expectations without some overriding reason of public policy to justify its doing so.

15. In *Schmidt v. Secretary of State for Home Affairs* (1969) 2 Chan. Div. 149 it was observed that "an alien who had been given leave to enter U.K. for a limited period, had a legitimate expectation of being allowed to stay for the permitted time, and if that permission was revoked before the time expires that alien ought to be given an opportunity of making representation.

16. In *Council of Civil Service Unions and Ors. v. Minister for Civil Service* 1984 3 All ER 935 it was observed-

A question arose whether decision of the Minister withdrawing the right to trade union membership, without consulting the staff which, according to the Appellant, was his legitimate expectation arising from the existence of a regular practice of consultation was valid.

It was further held:

An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he has been permitted to enjoy and which he could legitimately expect to be permitted to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he has received an assurance that it would not be withdrawn before he had been given an opportunity of making representation against the withdrawal. The Appellant's legitimate expectation arising from the existence of a regular practice of consultation which the Appellant could reasonably expect to continue, gave rise to an implied limitation on the minister's exercise of the powers.

17. In my opinion, in case, in a given situation a person even though strictly he might not have some legal rights in private law, but nevertheless in case he has an expectation from the promise made by the authorities or from the consistent past practice, he was given to operate a lease or some other right consistent with the legal transaction, or in case any action pertaining to the Petitioner's lease was initiated, he could legitimately expect that he shall be informed about the actions initiated and also would be afforded reasonable opportunity to make representation and an opportunity of being heard. This is how the Doctrine of

Legitimate Expectation comes into operation.

18. To put it differently the Petitioner being the highest bidder was granted lease and has deposited required sale amount, including the other requisite amount and also installments within time and also spent handsome amount in making investment for the purpose of rearing fish. In that case he could legitimately expect that before he was compelled to leave the operation of fishing even after compliance of all the legal formalities, he would have at least been given an opportunity to make representation, and an opportunity of hearing, for which he has been legitimately expecting. This is how this new Doctrine comes into operation. In my opinion, the Petitioner was entitled to the benefits of this Doctrine. (See judgments Today 1992 (6) S.C. 259 : Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, in Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries).

19. As neither the Petitioner was afforded any opportunity of hearing nor he was given any opportunity of making representation, hence the principles of natural justice were violated and the Petitioner was also deprived of the Doctrine of Legitimate Expectation. In that view of the matter the impugned order dated the 5th of February, 1994 (Annexure 4) cannot be sustained.

20. In the result the present writ petition succeeds and the same is allowed and the impugned order dated the 5th of February, 1994 (Annexure 4) is quashed to the extent it is applicable to the case of the Petitioner. The inevitable corollary is that the Respondents are restrained from disturbing or interfering with the Petitioner's right to operate fishing undertaking in the said ditches of Mallikpur Branch Canal in respect of which the lease was granted for a period expiring on the 31st of March, 1996.

N.K. Sinha, J.

21. I agree.