

(2022) 08 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11974 Of 2021

Yash Raj

APPELLANT

Vs

Bihar State Tourism Development Corporation Ltd

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80

Citation : (2022) 08 PAT CK 0032

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : P.K. Shahi, Satyam Shivam Sundaram, Anukriti Jaipuriyar, Ranjeet Kumar Singh

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for quashing the letter dated 19.06.2021 issued by the Bihar State Tourism Development Corporation Limited (hereinafter referred to as the "Corporation") under the pen and signature of its Managing Director, whereby and whereunder the petitioner has been intimated that the tender issued for operation and maintenance of the property of Corporation namely Hotel Lichhavi Vihar, Muzaffarpur has been cancelled on account of unavoidable reasons. The petitioner has further prayed for directing the respondent Corporation to execute an agreement with the petitioner in terms of letter dated 23.02.2021.

2. The brief facts of the case according to the petitioner are that the petitioner company is a joint venture in between M/s Yash Raj Motors Private Limited and M/s Dhrublok Merchants Private Limited. A tender notice was issued by the respondent corporation inviting proposal from experienced private limited companies/ public limited companies etc. in the form of technical bid and financial bid for operation and maintenance of various properties located at different places. The petitioner had also participated in the tender process and had submitted its technical bid and financial bid for the property of the

corporation mentioned at serial no. 2 of the tender notice namely Hotel Lichhavi Vihar, Muzaffarpur. It appears that the technical bid of the bidders were opened by the respondent Corporation, whereafter, the petitioner was intimated vide letter dated 19.2.2021 that it has been declared successful in the technical bid in respect of the aforesaid property namely Hotel Lichhavi Vihar, Muzaffarpur and the financial bid shall be opened on 22.2.2021 at 3:00 p.m. Thereafter, the respondent Corporation vide letter dated 23.02.2021, issued under the signature of the Additional General Manager of the respondent Corporation had intimated the petitioner that it has been declared successful in the aforesaid tender for operation and maintenance of the said property namely Hotel Lichhavi Vihar, Muzaffarpur for 10 years. The petitioner was further intimated to deposit the requisite licensing amount for the first year with GST which totals up to a sum of Rs. 1,23,96,550.00 apart from deposit of an equivalent amount as guarantee i.e. a sum of Rs. 1,05,05,551.00 in the form of NSC/Fixed Deposit/Bank Guarantee, pledged in the name of the respondent Corporation. The petitioner was also informed that after deposit of the licensing amount and sureties/ bank guarantee, the order of allotment would be issued and the agreement would be executed. The petitioner had then deposited the licensing amount on 01.03.2021. The requisite security money was also deposited and the necessary information was given to the Additional General Manager of the respondent Corporation vide letter dated 03.03.2021. However, the petitioner was not intimated regarding further development as also regarding execution of the agreement in question for a long time, hence the petitioner had submitted representations to the Managing Director of the respondent Corporation dated 1.4.2021 and 3.6.2021, requesting the concerned authority to execute the agreement with regard to the aforesaid work in question. While the petitioner was waiting for a reply from the respondent Corporation regarding execution of the agreement in question, all of a sudden it received a letter dated 19.06.2021 issued by the Managing Director of the respondent Corporation, whereby and whereunder it was intimated that the tender process for operation and maintenance of the aforesaid property namely Hotel Lichhavi Vihar, Muzaffarpur, has been cancelled and the letter issued earlier by the Corporation dated 23.02.2021 has also been cancelled.

3. The learned senior counsel for the petitioner Shri P.K. Shahi has submitted that except the instant tender work in question all other tender works of the same tender notice have been finalized and the respondent Corporation has entered into an agreement with the successful bidders. It is stated that tender of altogether 14 properties of the respondent Corporation, situated at different places, had been floated for operation and maintenance and amongst those properties, the tender of the property mentioned at serial no. 2, against which the petitioner had participated in the tender process, has only been cancelled. It is also submitted that the impugned order dated 19.06.2021 would show that no reason whatsoever has been furnished for cancelling the tender process of the said work in question, hence the principles of natural justice have been violated.

It is also submitted that since the petitioner has deposited the entire licensing amount apart from having furnished the security deposit in form of a bank guarantee, right has accrued to the petitioner, hence the petitioner could not have been non-suited.

4. Per contra, the learned counsel for the respondent Corporation has referred to the counter affidavit filed in the present case and has stated that as far as the bid of the petitioner is concerned, one of the bidder had challenged it before the Managing Director, BSTDC as also before the Principal Secretary, Department of Tourism, Bihar, Patna on the ground of non-transparency and biasness in allotting the bid to the petitioner, whereafter the said allegations were examined by the respondent Corporation and it was found that labour license certificate has not been provided by the petitioner, as was required to be furnished as per serial no. 16 and moreover the petitioner has left serial no. 18 blank, wherein declaration regarding "no pending litigation" had to be made. It is submitted that the said provisions were though treated to be directory and hence ignored at the first instance but since there was no stipulation regarding treatment of these provisions as directory in the NIT, in order to remove any doubt regarding biasness and with a view to ensure fairness, transparency, non-arbitrariness and impartiality in the tender process, it was directed by the Principal Secretary, Department of Tourism, Bihar, Patna to cancel the entire tender process and re-advertise the tender of the work in question through E-procurement site, whereafter the impugned order dated 19.06.2021 was issued to the petitioner by the respondent Corporation, intimating it that the entire tender process of tender pertaining to operation and maintenance of Hotel Lichhavi Vihar, Muzafarpur has been cancelled, hence the letter of award issued vide letter dated 23.02.2021 has also stood cancelled. It is also submitted that the petitioner has also been intimated vide letter dated 28.06.2021 to provide its bank details along with IFC Code so that refund of the amount furnished by it can be made but the petitioner has failed to do so, hence the amount could not be refunded to the petitioner. The learned counsel for the respondent Corporation has also referred to the tender conditions, especially to clause 3.16 thereof to submit that the respondent Corporation has reserved its right to accept or reject any bid at its sole discretion and without assigning any reason at any time.

5. The learned counsel for the proposed intervener has supported the stand taken by the learned counsel for the respondent Corporation.

6. Per contra, the learned senior counsel for the petitioner has submitted in reply that the respondent Corporation has come out with two reasons for cancellation of the tender work, in its counter affidavit which are:-

(i) In serial no. 16 information regarding labour license certificate was not furnished by the petitioner;

(ii) In column no. 18 the information regarding "no pending litigation" has also not been furnished by the petitioner.

In this regard, it is submitted that the answering respondents have themselves stated that since the aforesaid provisions were treated as directory, the same had been ignored at the first instance, however, later on in order to ensure fairness, transparency, non-arbitrariness and impartiality of the said tender process, the respondent Corporation decided to cancel the same on the direction of the Principal Secretary, Department of Tourism, Bihar, Patna. Nonetheless, it is the contention of the learned senior counsel for the petitioner that without award of the tender work, no one can be compelled to obtain a labour licence certificate, since for obtaining the same, certain amount of fees is required to be deposited initially and then on a yearly basis, hence in case the tender work was not awarded to the petitioner, obtaining the said license would have been a futile exercise and moreover, the said condition cannot be construed as a mandatory condition inasmuch as the license can also be obtained after acceptance of the bid. As regards the declaration to be given regarding no pending litigation, it is submitted that the petitioner company was formed as a joint venture immediately preceding the bid and was registered only after the petitioner company was declared as a successful bidder, hence there is no question of any pending dispute/ litigation regarding the petitioner company. Nevertheless, nothing had prevented the respondent Corporation from seeking further information/clarification from the petitioner. It is also submitted that the tender in question has been cancelled not by the respondent Corporation but on the direction of the Principal Secretary, Department of Tourism, Bihar, Patna who is not competent to do so inasmuch as clause-3.16 of the tender document itself states that the respondent Corporation reserves the right to accept or reject any bid at its sole discretion and without assigning any reason at any time.

7. The learned senior counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of State of Bihar & Others vs. Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472 to submit that in case no punitive or adverse consequence is provided in a provision in case of non-compliance thereof, the said provision cannot be construed as mandatory. In this regard, it would be apt to reproduce paragraph no. 25 of the said judgment rendered in the case of Bihar Rajya Bhumi Vikas Bank Samiti (supra) herein below:-

"25. We come now to some of the High Court judgments. The High Courts of Patna [Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar, 2016 SCC OnLine Pat 10104], Kerala [Shamsudeen v. Shreeram Transport Finance Co. Ltd., 2016 SCC OnLine Ker 23728], Himachal Pradesh [Madhava Hytech Engineers (P) Ltd. v. Executive Engineers, 2017 SCC OnLine HP 2212] , Delhi [Machine Tool India Ltd. v. Splendor Buildwell (P) Ltd., 2018 SCC OnLine Del 9551] , and Gauhati [Union of India v. Durga Krishna Store (P) Ltd., 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80 CPC have been drawn to reach the same result. On the other hand, in

Global Aviation Services (P) Ltd. v. Airport Authority of India [Global Aviation Services (P) Ltd. v. Airport Authority of India, 2018 SCC OnLine Bom 233] , the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held as under : (SCC On Line Bom para 133)

"133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by insertion of appropriate rule in the Bombay High Court (Original Side) Rules. The Court can always direct the petitioner to issue notice along with papers and proceedings upon other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award under Section 34 cannot be taken away for non-compliance of issuance of prior notice before filing of the arbitration petition."

The aforesaid judgment has been followed by recent judgments of the High Courts of Bombay [Maharashtra State Road Development Corpn. Ltd. v. Simplex Gayatri Consortium, 2018 SCC OnLine Bom 805] and Calcutta [Srei Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects (P) Ltd., 2018 SCC OnLine Cal 5606]."

8. The learned senior counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court in the case of Poddar Steel Corporation Corporation vs. Ganesh Engineering Works and others, reported in (1991) 3 SCC 273 to contend that a tender notice can be classified into two categories, one which lays down the essential condition of eligibility and the other which are merely ancillary or subsidiary with the main object to be achieved by the condition and while in the first case the authority issuing the tender has to enforce them rigidly, in the other case it is open to the authority to deviate from and not insist upon strict literal compliance of the condition in appropriate cases. It is thus submitted that the aforesaid conditions being referred to by the respondent Corporation to contend that the petitioner had not furnished particulars thereof are merely ancillary in nature, hence are not required to be insisted upon strictly, thus in the present case the respondent Corporation has acted in a hyper technical manner without any application of mind. The learned senior counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court in the case of Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Guahati & others, reported in (2015) 8 SCC 519,

paragraph nos. 20 to 25, 27 to 31, 35, 36, 38, 39, 43 and 44 whereof are reproduced herein below:-

"20. Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "naturalist" approach to the phrase "natural justice" and is related to "moral naturalism". Moral naturalism captures the essence of commonsense morality— that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. *nemo debet esse iudex in propria sua causa*; and (ii) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's Arthashastra. This Court in *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : AIR 1978 SC 851] explained the Indian origin of these principles in the following words:

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the hone [Ed.: The word "hone" is usually used as a verb, meaning "to sharpen". Rarely, it is also used a noun, as here, meaning "whetstone".] of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed from the legendary days of Adam—and of Kautilya's Arthashastra—the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are

noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

23. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth centuries AD called it "jura naturalia" i.e. natural law.

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

25. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as "hearing the other side". Prof. D.J. Galligan [On "Procedural Fairness" in Birks (Ed.), *The Frontiers of Liability*, Vol. 1 (Oxford 1994)] attempts to provide what he calls "a general theory of fair treatment" by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasising that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham [*A Treatise of Judicial Evidence* (London 1825)] , who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision-making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

"On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law-makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve

the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved.”

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits & burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject-matter of fair treatment. However, that aspect need not be dilated upon.

27. It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

29. De Smith [Judicial Review of Administrative Action (1980) 161] captures the essence thus:

“Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on the plainest principles of natural justice.”

30. Wade [Administrative Law (1977) 395] also emphasises that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

31. In *Cooper v. Wandsworth District Board of Works* [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554 : 143 ER 414] the Court laid down that: (ER p. 420) “...although there is no positive word in the statute requiring that the party shall be heard, yet the justice of the common law would supply the omission of the legislature”.

35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic

requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak case that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In *Maneka Gandhi v. Union of India* also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In *Maharashtra State Financial Corpn. v. Suvarna Board Mills*, this aspect was explained in the following manner:

"3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straitjacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of the case."

36. In *East India Commercial Co. Ltd. v. Collector of Customs* [AIR 1962 SC 1893] , this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the persons concerned disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principles of natural justice are violated. To the same effect are the following judgments:

(a) *Union of India v. Madhumilan Syntex (P) Ltd.* [(1988) 3 SCC 348 : 1988 SCC (Tax) 341] ,

(b) *Morarji Goculdas B&W Co. Ltd. v. Union of India* [1995 Supp (3) SCC 588] ,

(c) *Metal Forgings v. Union of India* [(2003) 2 SCC 36], and

(d) *Union of India v. Tata Yodogawa Ltd.* [(2015) 9 SCC 102 : (1988) 38 ELT 739 : (1988) 19 ECR 569 (SC)]

38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For

example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc.

Nevertheless, there may be situations wherein for some reason —perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that:

“... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that:

“... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in *R.C. Tobacco* had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken.

This was so clarified in ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: "31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non- supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non- supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

9. The learned senior counsel for the petitioner has also referred to a judgment

rendered by the Hon'ble Apex Court in the case of Tata Cellular Limited vs. Union of India, reported in (1994) 6 SCC 651, to contend that though the learned court would not sit as a court of appeal but would definitely review the manner in which the decision has been made.

10. I have heard the learned counsel for the parties and perused the materials on record from which certain facts are not in dispute inasmuch as upon an NIT having been issued by the respondent Corporation, the petitioner had submitted its bid for the work pertaining to operation and maintenance of Hotel Lichhavi Vihar, Muzaffarpur, whereafter it was declared as the successful bidder and accordingly, the respondent Corporation by a letter dated 23.02.2021 had informed the petitioner that it has been granted the contract work for operation and maintenance of the aforesaid Hotel Lichhavi Vihar, Muzaffarpur for a period of 10 years, hence he should deposit the licensing fee for the first year along with GST, totalling to a sum of Rs. 1,23,96,550/- apart from security amount of Rs. 1,05,05,551/-, whereupon the agreement would be executed. In pursuance to the said letter of the respondent Corporation dated 23.02.2021, the petitioner had not only deposited the first instalment of the licensing fee but had also submitted bank guarantee as security deposit, nonetheless the respondent Corporation failed to execute an agreement with the petitioner and finally by the impugned letter dated 19.06.2021, simply informed the petitioner that the tender for operation and maintenance of Hotel Lichhavi Vihar, Muzaffarpur, has been cancelled, hence the letter dated 23.02.2021 is also being cancelled. This Court finds that the impugned letter dated 19.06.2021, issued by the respondent Corporation cancelling the tender in question, is a non-speaking order which does not depict any reason for cancelling the tender in question. This Court further finds that in the counter affidavit filed by the respondent Corporation, the respondent Corporation has tried to justify the impugned order dated 19.06.2021 by stating therein that since the petitioner had not furnished the labour license certificate and had left the column regarding "no pending litigation" blank, though the same was treated to be directory in nature earlier but later on in order to maintain transparency, fairness etc., the respondent Corporation had decided to cancel the tender in question. In the opinion of this Court, a decision taken/an Order passed by an authority, has to be judged on its own merit as also on the reasons so mentioned therein, however, the same cannot be judged by and cannot be supplemented by fresh reasons brought by way of counter affidavit or otherwise, which cannot be looked into. In this connection, it would be relevant to refer to the judgment rendered by the Hon'ble Apex Court in the case of Mohinder Singh Gill vs. The Chief Election Commissioner, reported in (1978) 1 SCC 405, paragraph no. 8 whereof is reproduced herein below:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional

grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.” Orders are not like old wine becoming better as they grow older.”

11. Thus this Court is of the view that the impugned order dated 19.06.2021, on its own merits is bereft of any reason & moreover no cogent, clear or succinct reasons have been furnished in support of the decision to cancel the tender in question, which is in an indispensable component of a decision making process, hence the impugned order dated 19.06.2021 stands vitiated on this ground alone. This Court further finds that since the answering respondents have themselves admitted in the counter affidavit, in paragraph no. 13, that the aforesaid two grounds on which the tender in question qua the petitioner has been cancelled were earlier treated as directory, nothing is left for speculation, hence, any such minor deviation ought to have been condoned and moreover, the respondent Corporation could have engaged in correspondence with the petitioner to ascertain the correct facts. This Court also finds that there has been violation of the principles of natural justice inasmuch as despite the tender having been allotted in favour of the petitioner company and the petitioner having already deposited the license fees as also the security amount, no opportunity of hearing was granted to it much less any show cause notice was issued, seeking response from the petitioner, before cancelling the tender in question, by the impugned order dated 19.06.2021, hence on this ground as well the impugned order dated 19.06.2021 is not sustainable in the eyes of law, more so since many civil and/or evil consequences may follow, as a result of cancellation of tender in question and that too after deposit of license fees as also the security amount. Lastly, as is apparent from the records, though the respondent Corporation was required to take an independent decision, however, the decision to cancel the tender in question has been taken on the dictate of the Principal Secretary, Department of Tourism, Bihar, Patna, hence on this ground as well, the impugned order dated 19.06.2021 stands vitiated.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the impugned order dated 19.06.2021, issued by the Managing Director, Bihar State Tourism Development Corporation Limited, is not sustainable in the eyes of law, hence is quashed. The writ petition stands allowed.