

GAHC020000032023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
KOHIMA BENCH

W.P(C) No.03 OF 2023

M/S Manish Communications, a proprietorship firm represented herein by its Sole Proprritor Sri Biplab Chakraborty, son of Late Banamali Chakraborty, aged about 44 years and having its office at House No. 4, Ghoramara Road, Bhetapara, Nandan Path, Guwahati-781012, Assam

.....Petitioner

-Versus-

- 1. The State of Nagaland**, represented by the Chief Secretary to the Government of Nagaland, Kohima, Nagaland, PIN 797001
- 2. The Chumoukedima Town Council**, represented by the Additional Deputy Commissioner cum Administrator, Chumoukedima, Town Council, Chumoukedima, Nagaland, PIN 797103
- 3. The Additional Deputy Commissioner cum Administrator**, Office of the Chumoukedima Town Council, Chumoukedima, Nagaland, PIN 797103

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. D.J. Kapil, Advocate

Advocate for the respondents : Mr. V. Zhimomi, Government Advocate,
Nagaland

Date of Judgment & Order: : **13.11.2024**

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. J. Kapil, learned counsel for the petitioner who appears through Video Conference. Also heard Mr. V. Zhimomi, learned Government Advocate for the State of Nagaland.

2. This petition is directed against the cancellation of the permit which was earlier issued to the petitioner for setting up of five numbers of Unipoles measuring (20x10) ft along the NH 29 at Chumoukedima Town Council.

3. The learned counsel for the petitioner submits that the petitioner is in the business of erection of Unipoles and being desirous of undertaking of such activities, he filed necessary applications before the Chumoukedima Town Council. He submits that at the relevant point in time, there was no elected body in the Town Council and the affairs were looked after by the Addl. Deputy Commissioner who was acting as the Administrator of Chumoukedima Town Council. On the basis of the application made by the petitioner containing the particulars of the Unipoles proposed to be erected, a permit was granted on 04.11.2022 by the ADC-cum-Administrator, Chumoukedima Town Council. The permit was issued specifying certain terms and conditions under which this

permit was stated to be effective from the date of issue of the permit. The permit was issued for a period of five years from the date of the issue. Subsequently, the petitioner also deposited an amount of Rs. 1 lakh as permit fees for erection of the five Unipoles. While the petitioner was taking steps to execute the work, he was surprised to be served with a copy of the communication dated 19.12.2022, whereby the ADC-cum-Administrator, Chumoukedima Town Council cancelled his permit due to lack of approval from the concerned Department.

4. The learned counsel for the petitioner submits that on a plain reading of the cancellation order, it appears that this permit was cancelled not because of the violation of the conditions mentioned in the permit which was earlier granted to him vide order dated 04.11.2022, but on the ground that there was a lack of approval from the concerned department. It is submitted that in the permit granted to him, there was no reference that it will be subject to such approval as may be required from the concerned department. He further submits that while the petitioner was permitted to proceed with his work and his permit fees was also accepted, this cancellation order without issuance of notice is violation of the basic principles of natural justice. In support of his contentions, the learned counsel has referred to the Judgment of the Apex court rendered in *Kumaon Mandal Vikas Nigam Ltd. Vs Girja Shankar Pant and Ors*, reported in (2001) 1 SCC 182 as well as Judgment of the Apex Court rendered in *Canara Bank & Ors Vs. Debasis Das and Ors*, reported in (2003) 4 SCC 557. The learned counsel for the petitioner submits that the petitioner ought to have been put to notice and he ought to have been given an opportunity of being heard before the

unilaterally cancellation of the permits order was issued. Being aggrieved, the present writ petition has been filed.

5. The learned Government Advocate submits that as per instructions received, cancellation was made on the ground of the lack of approval from the concerned department.

6. On 08.11.2024, when the matter was called up, upon hearing the counsels at some length, the Court permitted the Government advocate to complete his instructions and called for the relevant papers to be placed to apprise the Court as to the grounds for cancellation of the permit. The matter was fixed today.

7. Today when the matter is called up, the learned Government Advocate has placed before the Court the original communications relating to the application put up by the petitioner, the grant of permits issued by the ADC-cum-Administrator dated 04.11.2022 as well as the cancellation of permit dated 19.12.2022. He submits that there is no further instructions received. He also fairly submits that no instructions is received in respect of whether any approval is necessary from the concerned department.

8. The learned counsel for the parties have been heard. Pleadings have been carefully perused. Judgments cited at the bar have also been carefully noted.

9. The respondent authority is the Chumoukedima Town Council, they are governed by the Nagaland Municipal Act 2001. At the relevant point in time when the permit was issued and cancelled, there was no elected body of the Municipal Council and accordingly, the Administrator was appointed had taken over the conduct of day

to day business of the Town council. This is also not disputed by the State respondents.

10. Constitution of the Municipal Council is prescribe under Section 8. Section 9 of the Act is prescribed for Composition of Municipal Council. Section 10 provides for duration of the Municipal Council which is for five years from the date appointed for its first meeting. Section 20 provides for constitution of the Town Council. Section 21 provides for Composition of the Town Council. Where the term of the Town Council expires under the prescription of the Act and where elections cannot be held than under Section 83, the Government made by notification appoint a government officer to be known as 'Administrator' to exercise, perform and discharge the power, duties and functions of the Municipality subject to such directions as may be given on this behalf by the Government.

11. A perusal of the above Sections revealed that after the expiry of the term of the Town Council when an Administrator is appointed, then the Administrator will exercise, perform and discharge the powers, duties and functions of the Municipality subject to such directions as may be granted by the Government. As such, the functions and the powers exercised by the Administrator at the point in time when elected members of the Town Council were not in office, such powers and functions will have to be accepted to be powers by the Town Council under the provisions of the statute.

12. It is informed at the bar that as on date elected body is duly constituted and are members of the Town Council.

13. In *Canara Bank & Ors. Vs. Debasis Das & Ors*, reported in (2003) 4 SCC 557, the Apex Court while dealing with disciplinary proceedings in respect of a Bank Officer in the context of natural justice in Administrative Law held that natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. It was held that the expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. The basic elements of a fair hearing, have their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The two basic rule of natural justice are "*nemo debet esse iudex in propria causa sua*" that is, "no man shall be a judge in his own cause" and the second principles is "*audi alteram partem*", that is, "*hear the other side*". A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "*qui aliquid statuerit, parte inaudita altera acquum licet*

dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" or in other words, "justice should not only be done but should manifestly be seen to be done". Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him.

14. In *Union of India & Ors. Vs. E.G. Nambudiri*, reported in (1991) 3 SCC 3, the Apex Court while examining orders passed by the administrative authorities, held that the principles of natural justice are intended to prevent miscarriage of justice and are now applied even to administrative orders which involved civil consequences. Generally principles of natural justice require that opportunity of hearing should be given to a person against whom an administrative orders is passed.

15. In *Kumaon Mandal Vikas Nigam Ltd. (Supra)*, the Apex Court held that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

16. Referring to the earlier Judgments of the Apex Court in *A.K. Kraipak and Ors. Vs. Union of India and Ors*, reported in (1969) 2 SCC 262 and the Judgment of *Ridge Vs. Baldwin*, 1964 AC 40; (1963) 2 All ER 66(HL), held that although Straight jacket formula cannot be made applicable but compliance of the doctrine is solely dependant upon the facts and circumstances of each case. The

totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance of the doctrine, the law courts ought to set right the wrong inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact, the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of governmental action.

17. Taking note of the law laid down by the Apex Court, it is evident from the papers placed before the Court today by the Government Advocate that no notice was issued to the petitioner prior to cancellation and the ground for cancellation as reflected in the order is because of lack of approval from the concerned department. The provisions in the Municipal Act in respect of the functions of the Town Council do not reflect any specific need for approval of any other authority. However, in the course of execution or business by the State, if there is any circular or notification which specifies that all actions are required to be approved by any concerned department in the State, all actions of Town Council will be required to be approved by any concerned department of the State, then no fault etc can be attributed to such a decision taken by the State.

18. However, in the facts of this case, no such Office Memorandum or Notification has been placed before the Court. The permit which was issued was made subject to the following conditions:

"1. The permit holder shall not obstruct movement of pedestrian/vehicle in any manner.

2. The permit holder shall abide by the rules and regulation of Chumoukedima Town Council (CTC) which will come into force from time to time.

3. The permit holder is restrained from displaying any advertisement related to tobacco/alcohol or any other banned/restricted items.

4. That the permit is valid from 4th of November 2022 to 3rd November 2023, however this permit may be renewed under fresh terms and conditions on expiry of the stipulated period.

5. That the permit holder shall bear all the expense being incurs on installation of those Advertising Boards/Hoardings including electricity charges if any."

19. However, the cancellation order does not reflect that the permit was cancelled because of any or all of the conditions prescribed in the permit. The only ground for cancellation is with regard to the non approval of the concerned department. What approval is required to be sought for has to be specified by the authority in the cancellation order or in the office records. No such documents have been placed before the Court today.

20. Under such circumstances, taking note of the law laid down by the Apex Court, it must be held that all administrative actions inherently required compliance of the basic principles of natural justice.

21. As discussed, prior to cancellation, it was incumbent on the respondents to issue a notice to the petitioner informing of their intention to cancel the permit and the grounds for such cancellations. Such notice was required to be served on the petitioner more particularly when the cancellation is not based for the reason for violation of any of the conditions prescribed in the permit. This Court therefore, comes to a conclusion that the

impugned order of cancellation of permit is contrary to the principles of natural justice and therefore cannot be allowed to be sustained.

22. The impugned order of cancellation dated 19.12.2022 therefore stands set aside. The matter is remanded back to the Chumoukedima Town Council who will re-decide the matter after issuance of proper notice on the petitioner. The petitioner will be given an opportunity of being heard and thereafter if the authorities consider it necessary to cancel the permit, appropriate orders accordingly may be passed.

23. The writ petition is accordingly allowed in terms of the above.

24. The original documents are placed before the Court are handed over back to the learned Government Advocates.

JUDGE

Comparing Assistant