

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12128 of 2017

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M/s Broad Son Commodities Pvt. Ltd., Dr. Himanshu Complex, Block Road,
Koilwar Chowk, P.S. Koilwar, District- Ara (Bhojpur) through its Director, Krishna
Mohan Singh, Son of Late Parmeshwar Singh, resident of Village- Bagmajhuan,
P.S. Koilwar, District- Bhojpur at Ara.

.... Petitioner

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Mines and Geology Department, Government of Bihar,
New Secretariat, Vikas Bhawan, Patna.
4. The Home Secretary (Police), Department of Home, Main Secretariat, Patna.
5. The Director General of Police, Department of Home (Police), Main Secretariat,
Patna.
6. The Inspector General of Police, Patna.
7. The Deputy Inspector General of Police, Central Range, Patna.
8. The Senior Superintendent of Police, Patna.
9. The Superintendent of Police, Rural, Patna.
10. The Superintendent of Police, Bhojpur at Ara.
11. The Superintendent of Police, Saran at Chapra.
12. The District Magistrate-cum- Collector, Patna.
13. The District Magistrate-cum- Collector, Bhojpur at Ara.
14. The District Magistrate-cum- Collector, Saran at Chapra.
15. Assistant Director, Mines & Geology, Patna.
16. Assistant Director, Mines & Geology, Bhojpur at Ara.
17. Assistant Director, Mines & Geology, Saran at Chapra.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr.Adv. Mr. Shivendra Kishore, Sr.Adv. Mr. Bimlendu Shekhar Thakur, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG Mr. Naresh Dixit, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-11-2017

Heard Mr. Y.V.Giri, learned Senior Counsel appearing for
the petitioner alongwith Mr. Shivendra Kishore, learned Senior
Counsel and the Advocate on record Mr. Bimlendu Shekhar Thakur.
The State is represented by Mr. Lalit Kishore, learned Advocate
General assisted by Mr. Naresh Dixit, learned counsel for the Mining



Department.

The petitioner is the settlee of sand ghats in the district of Patna, Saran and Bhojpur. Although the writ petition was filed praying for issuance of a number of directions to the respondents to allow the petitioner to operate the sand ghats settled with him without causing hindrance and also to provide administrative support for smooth operation thereof but before the matter could be taken for final consideration that cancellation orders have been passed by the licensing authority in respect of the sand ghat(s) at Patna and Saran. The petitioner has filed interlocutory application(s) to question the cancellation orders so passed by the District Magistrate, Patna and Saran. In so far as the district of Bhojpur is concerned, it is stated at the Bar that the cancellation order has also been passed in respect of the said district by the District Magistrate, Bhojpur but the order has not been received.

Mr. Giri, learned Senior Counsel appearing on behalf of the petitioner has chosen to restrict the challenge to the impugned action relating to the sand ghats at Patna while seeking leave to question the orders passed by the licensing authority in respect of the sand ghats at Saran and Bhojpur independently by filing separate writ petitions.

Leave is granted.

Mr. Giri has endeavoured to question the proceeding leading to cancellation order in question bearing memo No. 739 dated



15.9.2017, impugned at Annexure 23, on grounds that it is influenced by the orders of the superior authority. According to learned Senior Counsel, the conclusion drawn is again resting on no evidence and that the order of cancellation proceeds on a vague show cause which does not give any descriptive details on the allegation. While questioning the order on procedural lapse Mr. Giri has invited the attention of this Court to the stipulations underlying Rule 24(3) of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules') to submit that the Collector, Patna, who is the licensing authority for the settlement in question, even though has been conferred with the power to determine the lease and pass appropriate orders thereon but such exercise is accompanied with an obligation of giving reasonable opportunity to the applicant of being heard. It is argued by Mr. Giri and not contested that no opportunity of hearing has been provided to the petitioner, rather it is simply on the basis of show cause reply filed by the petitioner that the opinion has been formed by the Collector, Patna. According to Mr. Giri, learned Senior Counsel appearing for the petitioner, where the Statute prescribes the mode and manner of disposal of a matter, the statutory authority acting under the Statute, needs to follow the law and since it casts an obligation on the Collector to provide an opportunity of hearing to the party concerned, such opportunity should have been provided to the petitioner.



The argument of Mr. Giri has been contested by the learned Advocate General to submit that the Collector having given an opportunity to the petitioner to explain the charges when he was put on notice of show cause, it would satisfy the requirement of providing a reasonable opportunity to the petitioner. According to the learned Advocate General, since the Act does not provide for personal hearing, the contention advanced cannot be upheld.

I have heard learned counsel for the parties and have perused the records.

In the nature of the order which this Court proposes to pass, for the present it would not be required to delve deep into the merits of the case because in my considered opinion and in view of long list of cases as to what would constitute a reasonable opportunity of hearing, the order plainly does not satisfy the requirement for it is undisputed that it is simply proceeding on the basis of the show cause reply so filed by the petitioner that the Collector, Patna has formed his opinion denying opportunity to the petitioner to support his claim with materials whatsoever. Reference in this regard is made to the opinion of this Court expressed on a similar contest arising under the Pollution Laws arising from C.W.J.C.No. 421/2017 (**M/s Ramco Industries Ltd. V. the Bihar State Pollution Control Board & ors.**), which runs under:

“ It is not in dispute rather it is an admitted position that



the order put to challenge in this writ petition was passed without any notice and without any opportunity of hearing to the petitioner. Mr. Shivendra Kishore, learned Senior Counsel, while trying to advocate that the order passed by the Chairman under section 31A of 'the Air Act' is a routine action and a mere consequence of an order of rejection of consent, has somewhere left forgotten that the order is extreme in nature and visits the petitioner with severe penal consequences of extreme nature.

... .. The concept of adherence to the principles of natural justice has been subject matter of plethora of judgments and even though the right to notice coupled with the right of being heard has been upheld as an essential prerequisite to such adherence, yet the executive authorities discharging quasi judicial functions remain oblivious.

I am tempted in this regard, to refer to a judgment of the Supreme Court reported in (1981) 1 SCC 664 (**Swadeshi Cotton Mills & ors. v. Union of India**). A similar provision under the Industries (Development and Regulation) Act, 1951 came up for consideration before the Supreme Court. The Court taking note of judicial pronouncement rendered on the issue over years, in the case of **Ridge v. Baldwin**, reported in (1963)2 All ER 66 (HL), **State of Orissa v. Dr. Bina Pani Dei**, reported in AIR 1967 SC 1269, **A.K.Kraipak v. Union of India** (supra), **Mohinder Singh Gill v. Election Commissioner of India**, reported in (1978)1 SCC 405, **Maneka Gandhi v. Union of India**, reported in (1978)1



SCC 248, has held that even if the Statute conferring power is silent with regard to giving a pre-decisional hearing to the person affected and the action taken involves civil consequences of grave nature, yet a minimum hearing has to be afforded to the person concerned. The obligation cast on bodies discharging statutory function of quasi judicial nature in ensuring compliance to the principles of natural justice has taken a shape of essential requirement and a right to notice coupled with right of hearing is the order of the day except where circumstances are exceptional. ...
... ”

Reference is also made to the judgment of the Supreme Court reported in AIR 1990 SC 1417 (**Assam Silimanite Ltd. Vs. Union**) wherein at paragraph 12 the Supreme Court considering an identical issue of premature termination of lease has in consideration of an earlier judgment reported in AIR 1988 SC 1301 (**State of Haryana vs. Ram Kishan**), upheld the right of lessee to be heard before any order is passed by the licensing authority.

For the reasons so discussed and since undisputedly the petitioner has been denied opportunity of hearing in the matter, on this limited count, the order bearing Memo No. 739 dated 15.9.2017 of the Collector, Patna, impugned at Annexure 23 of the interlocutory application, cannot be upheld and is accordingly quashed and set aside. The matter is remitted to the Collector, Patna for consideration and disposal of the matter afresh but only after providing opportunity



of hearing to the petitioner. The petitioner shall be at liberty to raise all issues as raised herein. Since the parties are in attendance before this Court, let the petitioner appear before the Collector, Patna alongwith a copy of this order on 7th November, 2017 at 11:00 A.M. and when he shall proceed to fix the date of hearing for disposal of the matter in accordance with law expeditiously and preferably within a week thereafter.

As a consequence of the order so passed, all consequential actions taken by the Collector, Patna and orders passed in consequence of the order impugned in the present writ petition, shall stand quashed.

The interlocutory applications including those relatable to the districts of Saran and Bhojpur are accordingly disposed of with liberty to the petitioner, if so advised, to raise the issues raised in these application in appropriate proceeding(s) independently.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.11.2017
Transmission Date	NA

