## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.7048 of 2017**

1. Danapur Cantonment Board through the Chief Executive Officer, P.O. & P.S.- Danapur, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Patna.
2. The Principal Secretary, Road Construction Deptt., Bihar, Patna.
3. The Principal Secretary, Urban Development Deptt., Bihar, Patna.
4. The Collector, Patna.
5. The Sub Divisional Officer, Sadar, Danapur.
6. The Sub Divisional Police Officer, Danapur.
7. The Station House Officer, P.O. & P.S.- Danapur, Patna.
8. The Union of India through Secretary, Ministry of Defence, Delhi.

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Amarendra Nath Verma, Adv.
For the Respondent-State : Mr. Prabhat Kumar Verma, AAG 3
Mr. Syed Iqbal Ahmad, S.C.20
Mr. S.K. Sharma, A.C. to AAG 3
For the Union of India : Mr. S.D. Sanjay, Addl. Solicitor General
Ms. Kanak Verma, CGC

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 04-10-2017**

Heard learned counsel for the petitioner, learned AAG 3 for the State and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India.

2. The writ petitioner has moved the Court for the following reliefs:

> *"That the present application by Danapur Cantonment Board, a municipality within the ambit*

> *of Article 243P of the Constitution, a local autonomous body in the three tier governance-system is being filed for issuance of a writ in the nature of certiorari setting aside the direction issued by the respondent No.4 (Annexure-P5) stopping the petitioner from realizing the vehicle entry fee mandated to it by Section 67(e) of the Cantonments Act 2006 without first giving any notice or opportunity of hearing to the petitioner even though the entire exercise right from the board-resolution & tender-publication to grant of work-order & start of collection were made known to the respondents both by long-drawn correspondence & paper-publications and for all other suitable reliefs including an exemplary cost & compensation."*

3. Keeping in mind the nature of controversy, the Union of India was added as a party respondent for the reason that the State Government had referred the matter to the Union in view of the provisions of Section 56(2) read with Section 49(2) of the Cantonments Act, 2006 (hereinafter referred to as the 'Act'). In the aforesaid background the Court on 05.07.2017 had recorded the following order:

> *"3. The Court has been informed that the State has made a reference to the respondent no. 8 under letter no. 4150 dated 18.05.2017, copy of which has been made Annexure-F to the supplementary counter affidavit filed on behalf of respondents no. 4 and 5 today. It is noted that the said letter is by the Chief Secretary, Government of Bihar to the Secretary, Ministry of Defence, Government of India, New Delhi.*
>
> *4. In such view of the matter, it is agreed by the parties that the ball is in the court of the Central Government, which is the final arbiter in the matter.*
>
> *5. As the matter has financial implications for the petitioner and is also of general public importance,*

*the Court deems it appropriate that the Government of India takes a decision on the reference made to it expeditiously and in any case, within six weeks from today.*

*6. Accordingly, as prayed for by Mr. S. D. Sanjay, learned Additional Solicitor General, the matter be listed on 21st August, 2017, retaining its position.*

*7. The Court would clarify that the Central Government in the Ministry of Defence is free to take a decision in the matter independently, in accordance with law, as the Court has not expressed its opinion on merits."*

4. In terms thereof, the reference made by the State of Bihar to the Union of India, which was communicated by the letter written by the Chief Secretary, Government of Bihar to the Secretary, Ministry of Defence, Government of India, New Delhi dated 18.05.2017, was considered and order passed on the same was communicated to the Chief Secretary, Government of Bihar by letter dated 18.08.2017, copy of which has been brought on record in the petitioner's reply to the supplementary counter affidavit by respondents no. 4 and 5. From the same it transpires that the reference has been answered in favour of the petitioner and it has been upheld that the Cantonment Board is empowered to charge fees under Section 67 of the Act. It has further been clarified that the allegation with regard to there being irregularity in award of the contract, the matter was being examined separately.

5. Learned counsel for the petitioner submitted that now the

reference having been answered in favour of the petitioner, the embargo put by the District administration against such decision be withdrawn by them or set aside by the Court. On 18.09.2017, the Court, at the instance of learned counsel for the State, had adjourned the matter so as to give the State authorities an opportunity to take steps in terms of the order dated 18.08.2017 of the Union of India.

6. A supplementary counter affidavit has been filed on behalf of the State of Bihar, in which copy of letter No.8439 dated 19.09.2017 of the Home (Special) Department, Government of Bihar has been brought on record in which the State Government has requested the Union of India in the Ministry of Defence to reconsider the decision communicated under letter dated 18.08.2017.

7. Learned counsel for the State submitted that the said letter has been written in terms of Section 57 of the Act.

8. Learned counsel for the petitioner submitted that such stand is misconceived for the reason that Section 57 of the Act confers power upon the Central Government, at any time, to review any decision or order of the Board or the General Officer Commanding-in-Chief, the Command, and pass such orders thereon as it may deem fit, but not with regard to review of a decision passed on a reference made with regard to a dispute between the Board and the District Magistrate i.e., the State Government in the present case.

9. Learned Additional Solicitor General submitted that the power under Section 57 of the Act also gives to the Central Government power to review any decision, either *suo motu* or brought before it by any of the concerned parties.

10. Learned counsel for the State also pointed out to the fact that in view of various factors, including the public interest, the State Government has referred to the matter to the Ministry of Defence, Government of India for reconsideration.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of the learned counsel for the petitioner. Without going to the issue whether the Act provides power to review, the law settled is that an authority which passes an order can review the same for valid reasons. Just because a decision has been taken will not preclude the authority from taking a relook and to reconsider such decision and pass a fresh order, provided the circumstances and grounds so justify. However, that is not the issue before the Court. The issue is as to whether the decision of the petitioner to impose a fee for entry of vehicles on the road which passes through the Danapur Cantonment is sustainable.

12. As the issue was contested by the District Magistrate, Patna on grounds of inconvenience, as was agreed between he

parties, the issue was sent to the Government of India in terms of the provisions of Section 56(2) read with Section 49(2) of the Act and a specific decision has been taken which the Court finds relevant to incorporate in the order, and thus, the same is reproduced hereinbelow:

> *"Please refer to your letter No. G/Sena-05-01/2017-4150, dated 18.05.2017 regarding decision taken by Danapur Cantonment Board to impose licence fees on entry of commercial vehicles inside Danapur Cantonment Board.*
>
> *The matter has been examined and it has been found that the Cantonment Board is statutorily empowered under relevant provisions of the Cantonment Act, 2006 to charge licence fees on entry of vehicles and that similar Entry Fees have been imposed and are being collected by other Cantonment Boards under the jurisdiction of other State Governments.*
>
> *Further, it has also been confirmed by Department of Revenue, Ministry of Finance, Government of India that Cantonments have powers to charge fees under Section 67 of the Cantonment Act, 2006 and that since such fees are not a tax, it would remain unaffected by introduction of GST.*
>
> *As regards the issue of alleged irregularities raised by you in awarding the instant contract is concerned, the matter being independent of the powers of the Cantonment Board to levy licence fee on entry of vehicles, the same will be examined separately.*
>
> *With regards."*

13. Once the reference has been answered in favour of the petitioner, for the present at least, the issue cannot be left hanging.

14. Accordingly, in view of the answer to the reference by

the Union of India as contained in the communication dated 18.08.2017 under D.O.No.1563/2017-D(Q&C), the writ petition stands allowed. The restraint on the implementation of the resolution contained in Agenda No.21 of the meeting held on 31.05.2015 by the District Administration or any other authority is set aside and the authorities are further restrained from putting any spanner in implementation of the said resolution of the petitioner.

15. However, this shall not preclude the authorities in taking steps, in accordance with law, with regard to consideration or reconsideration by the Union of India, as and when the circumstances so require. The Court would also clarify that it has not expressed any opinion with regard to the merits of the issue or the grounds taken by the State of Bihar, either in its initial reference to the Central Government or in the letter dated 19.09.2017 to the Central Government for reconsideration. The same shall be dealt with independently on its own merits in accordance with law by the authorities concerned and thereafter the natural consequences flowing out of the same shall take their effect.

16. It is further clarified that the present order has been passed in the background of the facts and circumstances of the present case taking into consideration and relying upon the answer to the reference made by the Union of India contained in its letter dated

18.08.2017 which is always amenable to review/modification as may be required in future, though on *bona fide* and genuine grounds, including public interest.

**(Ahsanuddin Amanullah, J)**

Bibhash

| | |
|---|---|
| AFR/NAFR | AFR |
| U | |