

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.07.2018
Judgment pronounced on: 06.09.2018

W.P.(C) 6321/2018

BELA SETHI

..... Petitioner

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Raman Duggal, Ms. Aayushi Gupta and Mr. Insaaf Duggal,

For the Respondents: Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Sudhir Gupta, UDC and Mr. Virender Singh, APhi for NDMC

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present petition under Article 226 of the Constitution of India prays as follows:

- “i) issue a writ, direction or order in the nature of certiorari or any other writ, direction or order to call for the records pertaining to cancellation of mutation of property vide impugned order dated 25.04.2018 bearing Municipal No.7885/2, Plot No.33, M/s. Hotel Soma Deluxe, Basti Arakashan

Scheme, Arakashan Road, Pahar Ganj, New Delhi-110055 admeasuring 280.44 sq.yds. passed by Respondent No.2 against the Petitioner;

- ii) issue a writ, direction or order in the nature of mandamus or any other writ, direction or order to set-aside, hold and declare the impugned order dated 25.04.2018 being unlawful, illegal, unjustified, improper, misconceived, passed against the principle of natural justice, equity, good conscience and being null and void.
- iii) issue a writ, direction or order in the nature of mandamus or any other writ, direction or order directing Respondents Nos. 1 and 2 to restore the mutation of Property bearing Municipal No.7885/2, Plot No.33, M/s. Hotel Soma Deluxe, Basti Arakashan Scheme, Arakashan Road, Pahar Ganj, new Delhi-110055 admeasuring 280.44 sp.yds. vide Letter No.1504 dated 13.03.2009 of Respondent No.1 in its records in name of the Petitioner;
- iv) issue a writ, direction or order in the nature of mandamus or any other writ, direction or order quashing the Show Notice dated 25.05.2018 bearing No.583/DHO/CSP2, issued by Respondent No. 1 department for revocation of health Trade Licence issued in respect of Hotel Soma Dx. At Property No.7885/2, Plot No.33, Arakashan Road, Pahar Ganj, New Delhi-110055 in its records in name of the Petitioner being illegal, malafide in law, arbitrary, null and void;
- v) issue a Writ of Prohibition or any other appropriate Writ, Order or Direction, prohibiting/restraining the Respondents and /or their servants, agents, representatives, nominees, assigns, etc. from acting/giving effect to the impugned Order or show cause notice in future with respect to the said Property/business in the name and style of M/s Hotel Soma Dx. Run by the Petitioner with respect to the same;

- vi) Pass a direction/ and Order of interim relief restraining the Respondents and/or their servants, agents, representatives, nominees, assigns, etc. from taking any coercive step whatsoever in furtherance of the said impugned Order dated 25.04.2018 and show cause notice dated 25.05.2018 against the Petitioner during the pendency of the present Petition;”

2. The facts as are necessary for the adjudication of the present petition, are briefly adumbrated as follows:-

- a) The petitioner runs the business of a guesthouse in the name and style of M/s Hotel Soma Deluxe on the property No.7885/2, Plot No.33, Arakashan Road, Pahar Ganj, New Delhi-110055 (hereinafter referred to as the ‘subject property’) and is stated to own 60% undivided share in the subject property.
- b) Respondent Nos. 3, 4 and 5 collectively own 40% share in the subject property subject to their individual shares thereof.
- c) Vide letter dated 13.03.2009, Respondent No.1 mutated the subject property in the name of the petitioner on its records.
- d) Subsequent thereto, after obtaining a No Objection Certificate dated 22.10.2009 from Lt. Smt. Satwant Kaur (the previous

licence holder) *qua* transfer of the Health Trade License (hereinafter referred to as the 'said licence') in respect of M/s Hotel Soma Deluxe, the NDMC duly changed the name on the said license in favour of the petitioner.

- e) Vide order dated 25.04.2018, the North Delhi Municipal Corporation (for short 'NDMC') cancelled the mutation of the subject property in favour of the petitioner without issuing any show cause notice.
- f) On 25.05.2018, Respondent No. 1 issued a show cause notice to the petitioner to show cause as to why the said license issued in respect of the M/s Hotel Soma Deluxe, in favour of the latter be not revoked.

3. At the outset, a plain reading of the prayers above reflects that the petitioner is essentially aggrieved by the order dated 25.04.2018, passed by the NDMC, whereby mutation of the subject property granted to her by the Municipal Corporation of Delhi, vide sanction letter No.1504 dated 13.03.2009 has been cancelled without issuance of a show cause notice.

4. The petitioner is also aggrieved by show cause notice dated 25.05.2018 bearing No.583/DHO/CSP2, issued by NDMC for revocation of the said license issued to M/s Hotel Soma Delux, operated by the petitioner from the subject property.

5. Learned counsel appearing on behalf of the petitioner would urge that, the order cancelling mutation of the subject property has been passed by the NDMC without issuing any show cause notice or affording the petitioner an opportunity of being heard in this behalf and is therefore, in complete violation of the principles of natural justice.

6. Learned counsel appearing on behalf of the petitioner further urges that, the show cause notice dated 25.05.2018 bearing No.583/DHO/CSP2, issued by NDMC for revocation of the said license be also quashed inasmuch as, vide NOC dated 22.10.2009, given by the previous license holder, the NDMC had duly changed the name on the said license in favour of the petitioner and resultantly, the same stands valid in her name.

7. *Per contra*, learned counsel appearing on behalf of the respondents would urge that the petitioner had fraudulently obtained mutation of the subject property in her favour by misrepresenting herself as the sole owner, as opposed to holding, in fact, a share of 75% in the subject property, at the

relevant time.

8. I have heard the learned counsel appearing on behalf of the parties and perused the entire case record.

9. The principle of natural justice, i.e., *audi alteram partem* is firmly entrenched in our jurisprudence from the time of the decision of the House of Lords in the landmark case of **Ridge vs. Baldwin**, reported as **1964 AC 40**, and has permeated every judicial order rendered since by the Hon'ble Supreme Court of India and this Court; and in keeping with the dictum of the Constitution Bench of the Hon'ble Supreme Court of India in **State of Punjab vs. K.R. Erry and Sobhag Rai Mehta**, reported as **(1973) 1 SCC 120**, there can be no manner of doubt that it is unfair for any quasi judicial authority or even an administrative authority not to have allowed a reasonable opportunity to be heard before arriving at a decision, which has prejudicially and adversely affected the petitioner's civil rights and interest.

10. In **State of Orissa vs. Dr. (Miss) Binapani Dei and Others**, reported as **(1967) 2 SCR 625** the Hon'ble Supreme Court of India observed as follows:-

“An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge

called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

11. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially, therefore, arises from the very nature of the function intended to be performed. If an authority is vested with the power to decide and determine to the prejudice of a person, the observance of the

principles of natural justice is implicit in the exercise of such power. If the principle of *audi alteram partem* is ignored, any order or action taken by an administrative authority is a nullity and is liable to be set aside. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay.

12. It is trite to state that where a body or authority is quasi judicial and where it determines a matter involving rights judicially because of express or implied provision, the principle of natural justice, *audi alteram partem*, applies with full force and vigour.

13. In this behalf, it would be apposite to state that the impugned order dated 25.04.2018 prejudicially affects the civil rights of the petitioner and is prejudicial to her rights and interests in the subject property.

14. The Hon'ble Supreme Court of India in *Neelima Misra v. Harinder Kaur Paintal* reported as (1990) 2 SCC 746, whilst reiterating the requirement to record reasons in decisions passed by quasi-judicial or administrative authorities, in order to facilitate fairness and transparency in the decision making process, has held the following in para 23 thereof :

“23. The shift now is to a broader notion of “fairness” or “fair procedure” in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See : *Keshav Mills Co. Ltd. v. Union of India* [(1973) 1 SCC 380, 387; (1973) 3 SCR 22, 30] ; *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405, 434; (1978) 2 SCR 272] ; *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664; (1981) 2 SCR 533] and *M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar* [(1990) 2 SCC 48] .) For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lis inter partes*. There need not be any struggle between two opposing parties giving rise to a ‘*lis*’. There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept.”

15. In *Kranti Associates Private Limited vs. Masood Ahmed Khan and Others* reported as (2010) 9 SCC 496 the Hon’ble Supreme Court observed as under:-

“47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether

the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See: *David Shapiro in Defence of Judicial Candor* (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See: *Ruiz Torija v. Spain*, (1994) 19 EHRR 553, at 562 para 29 and *Anya v. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

16. A perusal of the impugned order of cancellation of mutation passed by the NDMC clearly reflects that, the same has been passed for no discernable reason, without enumerating any cogent reasons for such cancellation and demonstrates a complete non-application of mind, thereby causing grave

prejudice to the petitioner. In this view of the matter, I am of the view that a non-speaking order, which does not reflect or state the serious irregularities predicated on which, the action for cancellation of the mutation of the subject property has been taken is *ex facie* contrary to law.

17. For the foregoing reasons, insofar as, the first set of prayers *qua* setting aside the impugned order for cancellation of mutation is concerned; in view of the circumstance that, action for cancellation had been taken without the issuance of a show cause notice to the petitioner in the first instance and without affording an opportunity to her to respond to the allegations predicated upon which, the said action had been taken; the same deserves to be quashed and set aside on the solitary ground of non-observance of the principles of natural justice and the present petition deserves to be allowed.

18. Insofar as, the other prayers are concerned, in a catena of cases, the Hon'ble Supreme Court of India has deprecated the practice of the High Courts entertaining writ petitions questioning the legality of the show cause notices. It is a settled law that a show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party, unless the same has been issued by an authority having no jurisdiction to do so or is *non est* in law. Furthermore, it has been

observed that the writ petitioners should, in the first instance, approach the competent authority issuing such show cause notices before approaching the Courts. Resultantly, any interference by the court, at this stage, in that behalf would be premature. [Ref : **State of Uttar Pradesh v. Brahm Datt Sharma and Anr.** reported as AIR 1987 SC 943; **The Special Director and Anr. vs. Mohd. Ghulam Ghouse and Anr.** reported as AIR2004 SC 1467; **Union Of India And Another vs Kunisetty Satyanarayana** reported as (2006) 12 SCC 28].

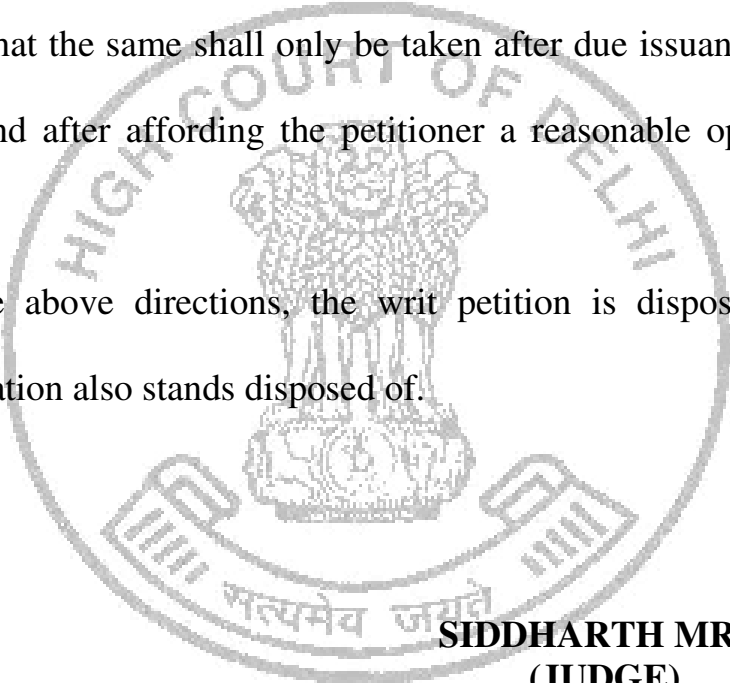
19. Therefore, insofar as, the second set of prayers *qua* quashing of show cause notice dated 25.05.2018, issued by the Respondent No.1 for revocation of the said licence is concerned, the same is found untenable and is rejected, inasmuch as, the said show cause notice, having been issued by the competent authority, is not an adverse order and does not cause any prejudice to the rights of the petitioner herein, and any illegality of the same, ought to be disputed before the competent authority, in the first instance.

20. In view of the foregoing discussion, since the petitioner has been visited with an order cancelling the mutation of the subject property; an act which prejudicially affects her civil rights, without issuing a Show Cause Notice or be afforded a hearing in the matter, prior to the passing of the

impugned order dated 25.04.2018, the same in my considered view is a nullity. The said impugned order is accordingly set aside.

21. The writ petition is, therefore, partly allowed. The official respondents are directed to restore the mutation of the subject property in the name of the petitioner in its records forthwith. However, the respondents are at liberty to take appropriate action, in accordance with law, if they are so advised, but with a caveat that the same shall only be taken after due issuance of a show cause notice and after affording the petitioner a reasonable opportunity of being heard.

22. With the above directions, the writ petition is disposed of. The pending application also stands disposed of.



SIDDHARTH MRIDUL
(JUDGE)

SEPTEMBER 06, 2018

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