

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22563 of 2018

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Kamaldeep Singh, Son of Sardar Trilok Singh, resident of Grand Apartments,
Shop at Paneer and Snacks Corner, Frazer Road Corner, opposite Bata, both
P.S. Kotwali, Frazer Road, Patna - 800001

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation through Its Municipal Commissioner,
Maurya Lok Complex, Budh Marg, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya
Lok Complex, Budh Marg, Patna.
3. The Executive Engineer, New Capital Circle (North), Patna Municipal
Corporation, Harding Road, Patna.
4. The Assistant Engineer, New Capital Circle (North), Patna Municipal
Corporation, Harding Road, Patna.
5. The Junion Engineer, New Capital Circle (North), Patna Municipal
Corporation, Harding Road, Patna.
6. The Vigilance Officer, Patna Municipal Corporation, Budh Marg, Patna.
7. General Manager, PESU (Patna Electric Supply Undertaking), Patna.
8. Assistant Electrical Engineer, Electric Supply Avar Pramandal,
Mauryalok, Patna.
9. Managing Director, SBPDCL (South Bihar Power Supply Corporation
Limited), Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akash Deep, Advocate Mr. Tushar Vaibhav, Advocate Mr. Prabhat Kumar Singh, Advocate
For the Respondent/s	:	Mr. Vindhyachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate Mr. Janmejay Gridhar, Advocate
For the Corporation	:	Mr. Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-09-2023

Heard Mr. Akash Deep, learned counsel appearing on
behalf of the petitioner and Mr. Vindhyachal Singh, learned
senior counsel representing the Patna Municipal Corporation.
Mr. Anand Kumar Ojha, learned counsel for the Bihar State



Power Supply Corporation Limited (SBPDCL), Patna.

2. The petitioner, who claimed to be the owner of M/s Paneer and Snacks Corner situated at Frazer Road corner, P.S. Kotwali Patna invokes the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking the following reliefs:

(a) For quashing the notice issued by the Respondent no. 1 under the hand of Respondent no. 2 as contained in letter no. 9755 dated 22.10.2018 (Annexure-4) as the matter stands finally concluded vide order dated 04.06.1987 passed in Vigilance Case No. 10A/87 (Annexure 3) passed by the Vice Chairman of the Patna Regional Development Authority;

(b) For quashing the Letter No. 10049 dt. 29.10.2018 (Annexure 5) of the Respondent No.6 requesting the Respondent Nos.7 and 9 to disconnect the electric supply to petitioner's shop even before final disposal and passing of any order in Vigilance Case No.224A/18 initiated by the Respondent No.2 and Letter No.1307 dt.22.11.2018 (Annexure 5/1) of Respondent No.8 informing the Petitioner that electric supply is to be disconnected within three days in compliance of orders and directions to so do contained in Letter No.10049 dated 29.10.2018 (Annexure 5);

(c) For restraining the Respondent authorities and the employees of the Respondent no. 1 from intimidating, threatening or causing any harm to the writ petitioner or his shop or employees before



final disposal of Case No. 224A/18 and its order attaining finality;

(d) For any other reliefs to which the writ petitioner may be found entitled.

3. It is the case of the petitioner that the premises in which the petitioner runs his shop, belongs to Sri Hanumanji through Sri Kalikanandan Niji Kuldevta Trust at Holding No. 1204, Ward No. 28, Circle No. 6 on Plot No. 65 (part) of the Patna Municipal Corporation. The father of the petitioner being tenant has been running the shop, in question, in the rented premises since 1987, till he was attacked by paralysis and now the petitioner runs the shop.

4. It is submitted that the petitioner's father was rented out the shop in 1987 on payment of monthly rent and while the shutters were fixed in place of earlier wooden shutters treating it as alteration in the construction, the Patna Regional Development Authority (hereinafter referred to as "PRDA") instituted a case bearing no. 10 A/87 alleging construction of a big shop having been made without approval of plan and a notice was issued. In response to the notice, the petitioner submitted his reply and the Vice Chairman of the PRDA after examining all the records, including the local inspection report, vide order dated 04.06.1987 was pleased to drop the proceeding holding that for the kind of repairs done to the old premises no



sanction of plans was required for the purpose. The aforesaid order has been brought on record by way of Annexure P/3. It is made clear that after coming into force of Bihar Municipal Act, 2007, the Patna Regional Development Authority vested in the Patna Municipal Corporation with all its responsibilities.

5. He next submits that while he was continuing in the peaceful possession of the shop, running in the name and style of M/s Paneer and Snacks Corner, a notice was served upon him as contained in Letter No. 9755 dated 22.10.2018 enclosing copy of the spot verification report. The aforementioned notice alleging violation of provisions of Bihar Municipal Act, 2007 as he was found carrying out construction. Hence, he was asked to file his show cause within stipulated period, as to why not the said construction be demolished.

6. With reference to the notice which is based upon the spot verification report, Mr. Akash Deep, learned counsel for the petitioner vehemently submits that bare perusal of the report, it does not talk about any alteration, modification and construction of the structure nor there is any allegation that the petitioner has made any further construction after the issue has been set at rest in the year 1987 vide order dated 04.06.1987 (Annexure – 3). Learned counsel further drew the attention of



this Court to Sections 313 and 315 of the Bihar Municipal Act, 2007, the violation of which is charged in the impugned notice and submits that in the facts of the present case the same is not attracted as the respondent “Municipal Corporation” failed to demonstrate that there is any modification, alteration and constructions.

7. Reliance has also been made on a judgment rendered by the Apex Court in the case of **Oryx Fisheries Private Limited Vs. Union of India and Others** reported in **2010 (13) SCC 427**. He next submitted that the mala fide is also writ large from the fact that not only a notice has been issued, as contained in Letter No. 9755 dated 22.10.2018, but simultaneously another letter has been issued to the Managing Director, South Bihar Power Supply Corporation Limited (SBPDCL) Patna for disconnection of the electric supply through Letter No. 10049 dated 29.10.2018. In furtherance of which, the petitioner was served Letter No. 1307 dated 22.11.2018 issued by the Assistant Electrical Engineer, which in the submission of the petitioner is wholly without jurisdiction, apart from the mala fide.

8. Apart from the aforesaid submissions, he also submitted that the building, in question, is almost 100 years old



and the matter having been finally decided cannot now be again raked up.

9. On the other hand, learned senior counsel representing the Patna Municipal Corporation drawing the attention of this Court to the spot verification report as contained in Letter No. 986 C dated 06.10.2018 submitted that from the report it appears that one additional betel shop has been constructed, just beside the shop of the petitioner and, prima facie, new construction has been made which was not present while passing the order in the year 1987. Thus, it clearly violates the provisions prescribed under Sections 313 and 315 of the Bihar Municipal Act, 2007. He also submits that in case the petitioner has any grievance, he can bring all these facts before the Municipal Commissioner, Patna Municipal Corporation by filing proper reply and he would be under obligation to pass a reasoned and speaking order, considering the submissions of the petitioner. He next submits that in case the notice impugned would be interfered, the encroachers like the petitioner and others would get emboldened and continued to encroach upon the Government land, which will create further problems to the public at large and, as such, the proper remedy available to the petitioner is to approach before the Municipal Commissioner of



the Patna Municipal Corporation.

10. On the other hand, Mr. Ojha, learned counsel representing the South Bihar Power Supply Corporation Limited (SBPDCL) submits that no sooner he received the information that the matter is pending adjudication before this Court, no action has been taken as the respondent SBPDCL is not subordinate to the Patna Municipal Corporation, as it is governed by the Electricity Act, 2003 and the rules and regulations made therein.

11. Having considered the submissions made on behalf of the parties and after giving anxious consideration to the impugned notice, which is based upon the spot verification report, this Court finds substance in the submission of the petitioner as there is no materials suggesting that, there has been any alteration, modification or construction made in the shop, which is being possessed by the petitioner. Further with respect to the shops, in question, the order has been passed by the, the then Vice Chairman of the PRDA, and the proceeding was dropped vide order dated 04.06.1987 (Annexure – P-3) with a direction that the petitioner shall not endeavour to make any further construction, which order has also attained finality. This Court has also taken note of the sketch map filed alongwith the



notice giving rise to earlier Vigilance Case No. 10A/1987 and the present spot verification report available on record, however, after having been compared to each other, no alteration, modification or construction is found. It is the specific case of the petitioner that he has no concern with the betel shop, which is situated beside the shop, in question, and, as such, on this score also, this Court finds that the submission of the Corporation has no legal force. The materials placed by the Municipal Corporation, through the impugned notice based on spot verification report, thus do not attract the invocation of any provision, much less under Sections 313 and 315 of the Bihar Municipal Act, 2007.

12. This Court also cannot lose sight of the fact that the consequential impugned letter bearing no. 10049 dated 19.10.2018 directing the SBPDCL for disconnection of electric supply of the shop, in question, without any cause to be shown to the petitioner, is a trait of arbitrariness having no sanction of law and, *prima facie*, suggestive of calculated and predetermined move of the Municipal Corporation.

13. The petitioner has also rightly relied upon the judgment of Apex Court rendered in the case of **Oryx Fisheries Private Limited (supra)**. It would be apposite to quote



paragraph Nos. 24, 27, 28 and 31:

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is



obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

14. In the opinion of this Court a show-cause notice bereft of any material particular or information is bad in law, if any action or order of the Authority is going to visit civil consequences, in case the reply found to be not satisfactory.

15. This Court is also not oblivious of the settled principle, enunciated, by the Apex Court that Article 226 should



not be permitted to be invoked in order to challenge show-cause notices, unless accepting the facts in the show-cause notice to be correct, either no offence is disclosed or the show-cause notice is *ex facie* without jurisdiction or malafide.

16. In view of the aforementioned facts, circumstances and the position obtaining in law, especially the fact that the impugned show-cause notice, based on spot verification report does not suggest any alteration, modification or construction of the shop, in question, constituting infraction of any of the provisions of Bihar Municipal Act, this Court has not hesitation to quash the impugned notice as contained in Letter No. 9755 dated 22.10.2018 (Annexure – 4) and all other consequential letters as contained in Annexure – 5 and 5/1 to the writ petition.

17. This writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2023.
Transmission Date	NA

