Mahnar Nagar Panchayat and Others Vs State of Bihar and Others

C.W.J.C. No. 10539 of 2002

Court: Patna High Court

Date of Decision: Nov. 3, 2003

Acts Referred:
Bihar and Orissa Municipal Act, 1922 â€" Section 11A, 136, 137, 3(14B), 356#Central Motor Vehicles Rules, 1989 â€" Rule 191#Constitution of India, 1950 â€" Article 243Q(1), 243W#Motor Vehicles Act, 1988 â€" Section 117

Citation: (2004) 2 PLJR 434

Hon'ble Judges: Aftab Alam, J

Bench: Single Bench

Advocate: Harendra Pd. Singh, for the Appellant; S.D. Yadav, for State and S.S. Asghar Husain and S. Azeem, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aftab Alam, J.
This case presents the North Bihar Regional Transport Authority and the district administration of Vaishali in poor light

before the court and the facts of the case typically illustrate how the constitutional scheme is flouted and subverted at the grass-root level by the

very same statutory authorities and the Administration that bear the legal obligations and responsibilities to give effect to the provisions of the

Constitution.

2. The Petitioner before the court is the Nagar Panchayat, Mahnar (Vaishali). It is a "Municipality" envisaged under Article 243Q(1)(a) of the

Constitution. It is defined u/s 3(14B) of the Bihar & Orissa Municipal Act and it was constituted by the State Government by issuing the

notification under memo No. 2651, dated 30.8.2001 in exercise of its powers u/s 6, read with Section 390E of the Municipal Act. Article 243W

of the Constitution deals with powers, authorities and responsibilities of municipalities and the 12th schedule of the Constitution enumerates the

areas and spheres over which the municipalities would exercise their authority and jurisdiction. What are enumerated in the 12th Schedule are fully

incorporated in Section 11A of the Municipal Act and on a perusal of the list, in particular Item No. 17 of the 12th Schedule and Clause XVIII of

Section 11A of the Municipal Act, one should think that the right to set-up and run a bus stand should come naturally to the Nagar Panchayat or in

any event the claim of the Nagar Panchayat in this regard would be far more preferential than ah individual person. But the North Bihar Regional

Transport Authority and the district administration of Vaishali seem to think otherwise.

3. In this case the process for setting up and operating the bus stand was initiated by the Nagar Panchayat, Mahnar but since the Nagar Panchayat

did not have Its own land, it issued a notice looking for a suitable piece of land for setting up a bus stand to be taken by it on lease. It received

offers of land and found one of them suitable for its purpose. But at the end of the day the Regional Transport authority and the district

administration granted permission for setting up. and running the bus stand to the individual person (Respondent No. 7) whose land the Nagar

Panchayat had selected for setting-up the bus stand under its own control.

4. This Court would have understood if the whole thing was the result of some over-sight and it would have appreciated had the authorities shown

any remorse over the mistake and tried to correct it. But the worst part of it all is that the Respondent authorities have brazenly tried to defend

what is indefensible and their stand and conduct before the court gives rise to suspicions of foul play.

5. The Nagar Panchayat, Mahnar, as noted above, was established along with 76 other Nagar Pahchayats vide notification No. 2651, dated

30.8.2001 and its present set of Municipal Commisioners were elected in the election, the result of which was declared on 3.5.2002. The

Municipal Commissioners later elected the Chairman (who represents the Nagar Panchayat as Petitioner No. 1) and the Vice Chairman (Petitioner

No. 3)

6. Even before the Nagar Panchayat was constituted by elected Municipal Commissioners and while it was still under a Special Officer, a meeting

was held on 2.2.2002 to consider the ways and means to augment its extremely poor finances. In the meeting a resolution was adopted that a bus

stand as well as a Taxi, Maxi & Jeep-Commander stand be set up under the Nagar Panchayat and the Deputy Transport Commissioner may be

moved for granting permission for that purpose under the Motor Vehicles Act. A copy of the resolution, dated 2.2.2002 is at Annexure 2. The

Dist. Magistrate, Vaishali was apprised of the resolution by letter, dated 18.1.2002 (Annexure 3) in which it was pointed out that the resolution of

the Nagar Panchayat came under Sections 137 and 356 of the Municipal Act. Another letter was sent to the Deputy Transport Commissioner-

cum-Secretary, North Bihar Regional Transport Authority, Muzaffarpur under memo No. 33, dated 2.2.2002 (Annexure 4). In this letter, it was

stated that there was no fixed bus stand or Taxi, Maxi stand at Mahnar and vehicles were parked randomly at awkward places on the road

causing much inconveniences and a risk of major accident. Further, that with a view to improve the finances of the Nagar Panchayat, a resolution

was adopted in the special meeting held on 18.1.2002 for setting up a bus-stand by the Nagar Panchayat and to obtain the necessary permission in

this regard from the North Bihar Regional Transport authority. It was further stated in the letter that the resolution of the Nagar Panchayat came u/s

136 and 137 of the Municipal Act. A request was, accordingly, made for grant of permission to the Nagar Panchayat to set-up a bus stand and a

Taxi, Maxi stand.

7. On 8.3.2002 the Nagar Panchayat issued a general notice (Annexure 5) for taking a suitable land on lease for setting up a bus, Taxi, Maxi,

Jeep-Commandar stand and invited applications from owners of land. In response to the notice, the Nagar Panchayat received three applications

including one by Ranjana Rani, Respondent No. 7 (copy of her application is at Annexure 6-b). All the three applications were forwarded to the

Dy. Collector Land Reforms vide letter, dated 18.3.2002 (Annexure 6) for necessary enquiry and comments in regard to the respective lands

offered, by the three Applicants. Later on, an agreement was arrived at for taking the and of Respondent No. 7 on lease for three years from

1.4.2002 to 31.3.2005 and an agreement, dated 22.3.2002 (Annexure 7) was executed in that regard by the Special Officer, Mahnar Nagar

Panchayat and the landowner, Respondent No. 7. On the same date a Kirayanama (Annexure 8) was executed by the Special Officer and

Respondent No. 7 in terms of which the land-owner gave the land for five years (1.4.2002 to 31.3.2007) for setting up the bus stand on annual

rental of Rs. 18,000/-. From a perusal of the agreement and the Kirayanama, it is evident that the land-owner had agreed to give land to the Nagar

Panchayat on lease on rental for a bus-stand to be established there by the Nagar Panchayat. Neither in the agreement nor in the Kirayanama,

there is any suggestion that the proposed bus-stand was to be set up by the land owner herself.

8. On 23.2.2002 the Deputy Collector Land Reforms by his letter No. 69, addressed to the Sub-divisional Officer, Mahnar submitted a report

(Annexure 10) stating that permission could be granted to the Nagar Panchayat for setting-up the bus-stand, Maxi Taxi stand on the land of plot

No. 4671, under Khata No. 1195 measuring 15 kathas 3 dhurs in area, that is, the land offered by Respondent No. 7. On the same day the sub-

divisional Officer, Mahnar forwarded the report of the Deputy Collector Land Reforms to the Deputy Collector, Incharge, District Collectorate,

Vaishali expressing his concurrence with the recommendation made in the report.

9. On the basis of the report(s) the Dist. Magistrate, Vaishali by his letter No. 343, dated 30.3.2003 (Annexure 12) made, a recommendation to

the Deputy Transport Commissioner-cum-Secretary, North Bihar Regional Transport Authority for grant of necessary permission to the Nagat

Panchayat for setting-up and operating the bus stand and Taxi, Maxi stand on the land offered by Ranjana Rani (Respondent No. 7). On the same

date the Dist. Magistrate by another letter bearing No. 344, dated 30.3.2003 (Annexure 13) informed the Special Officer, Nagar Panchayat that

recommendation for grant of permission had already been sent to the Regional Transport Authority and awaiting necessary permission from the

Authority, the Nagar Panchayal should make collection of tolls through its staff with effect from 1.4.2002. It was even stated in the letter that the

Special Officer, Nagar Panchayat must ensure a minimum collection of Rs. 2,21,100/- as being the revenue collected for the year, 2000-01. On

receipt of the letter, dated 30.3.2002, the Special Officer of the Nagar Panchayal by his order dated 31.3.2002 (Annexure 14) made a roster,

assigning duties to the staff of the Nagar Panchayat for collection of toll from the bus-stand.

10. In total and complete disregard of these facts and circumstances that are taken note of in the preceding paragraphs the Secretary, North Bihar

Regional Transport Authority issued an order under his memo No. 601, dated 28.5.2002 (Annexure 15). In this order, it was stated that in view of

the recommendation made by the Dist. Magistrate under his letter No. 343, dated 30.3.2002, approval for running the Mahnar bus stand was

granted to Respondent No. 7. This order had no basis and it wrongly and falsely stated that the Dist. Magistrate in his letter No. 343, dated

30.3.2002 had recommended for grant of permission in favour of Ranjana Rani. As already noted above, the Dist. Magistrate had recommended

for grant of permission to the Nagar Panchayat for setting-up the bus-stand on the land of Ranjana Rani taken by the Nagar Panchayat on lease.

11. Following the order of the Secretary, Regional Transport Authority, dated 28.5.2002, the Dist. Magistrate made no demur and simply issued

the consequential order under this memo No. 565, dated 17.6.2002 (Annexure 16) recalling his earlier order, dated 30.3.2002 (Annexure-13)

and granting permission to Respondent No. 7 to set-up and run a bus stand on her land and to collect tolls from different kinds of vehicles at the

rate indicated in the order.

12. The Nagar Panchayat thereafter wrote letters to the district administration as well as the Regional Transport Authority protesting against the

grant of permission to Respondent No. 7, but, no response was elicited. The Nagar Panchayat finally filed this writ petition challenging the order,

dated 28.5.2002 (Annexure 15) issued by the Secretary, Regional Transport Authority and the consequential order, dated 17.6.2002 (Annexure

16) issued by the Dist. Magistrate.

13. This case was taken up for the first time on 7.2.2003 when notices were directed to be issued to Respondent No. 7. On 8.4.2003 this Court

passed an interim order by which the operation of the order at Annexure 15 was stayed and Respondent No. 7 was restrained from operating the

Mahnar bus stand on the basis of that letter. The enforceability of the interim order was made the personal responsibility of the Dist. Magistrate,

Vaishali.

14. A supplementary affidavit was then filed on behalf of the Petitioner on 1.5.2003, alleging that despite the interim order of this Court,

Respondent No. 7 was being allowed to operate the bus stand and to collect toll from vehicles. In support of the assertion receipts issued in the

name of Ranjana Pariwahan upto April 29 were enclosed as Annexure 22 series. Later on, in the affidavit filed on behalf of the Respondents, it

was stated that Respondent No. 7 was restrained from collecting toll from the bus stand.

15. Three counter affidavits were filed in this case; one by the contesting Respondent No. 7, another on behalf of the District Magistrate, Vaishali

and yet another on behalf of the North Bihar Regional Transport Authority.

16. In the counter affidavit of Respondent No. 7 reference was made to some earlier orders passed by this Court on the dispute regarding

settlement of the Mahnar bus stand and it was stated that in the writ petition those earlier orders were suppressed and, therefore, the writ petition

was not maintainable. I fail to see how the Petitioner can be accused of suppression of material facts and how the present writ petition can be held

to be not maintainable. The earlier cases were not on issue coming in dispute in the case in hand and all that the earlier orders show is that attempts

were being made from before to grab up the Mahnar bus stand.

17. The first case referred to in the counter affidavit of Respondent No. 7 is C.W.J.C. No. 1719 of 1997. That was disposed of by me by order,

dated 19.4.1997 in that case the right to collect toll from the bus stand was earlier settled in favour of one Jawahar Prasad the Petitioner in the

case. Later on, the Municipality issued an order abrogating the settlement made in his favour Jawahar Prasad then came to this Court seeking a

direction to the officers of the Mahnar Municipality to restrain Respondent No. 4 (in that case) from operating a Bus and truck stand and from

realizing tolls from the Bus and truck operators parking their vehicles in the stand. Respondent No. 4 in that case appeared and stated before the

court that he never operated any bus stand and he never collected any tolls from any buses/trucks nor he intended to do so in future. That was the

end of the matter in so far as he was concerned. On behalf of the Mahnar Municipality it was stated that earlier settlement in favour of Jawahar

Prasad was made due to mistake. It was pointed out that under the Motor Vehicles Act a bus stand could be set-up only with the permission of

the Transport Authority. The Municipality was, there fore, not competent to set-up or settle a bus stand in favour of anyone for want of the

necessary permission from the Authority. When this fact was realised the settlement made in favour of Jawahar Prasad was cancelled and the

Municipality was ready to refund the entire amount of settlement deposited by him. The writ petition was, therefore, dismissed after taking note of

the stand of the municipality.

18. The second case referred to in the counter affidavit of Respondent No. 7 is C.W.J.C. No. 7969 of 2002. According to Respondent No. 7, it

was filed by one Ravi Kumar who was one of the three persons who had offered their lands to the Municipality for setting up the bus stand. That

writ petition was dismissed as withdrawn by order, dated 18.7.2002.

19. The third writ petition referred to in the counter affidavit is C.W.J.C. No. 8568 of 2002. It was filed as Public Interest Litigation by one Ahilya

Devi who herself, was a Ward Councillor of Mahnar Nagar Panchayat and who claimed that she was duly authorized by the Chairman of the

Nagar Panchayat to file this case. It appears that that case was filed at the beginning of the present dispute when the Nagai Panchayat was

apprehending that a bus stand may be set up by the district administration at a place other than the one selected by the Nagar Panchayat. A bench

of this Court, presided over by the Hon''ble the Chief Justice, declined to take up that case as public interest litigation but made certain

observations that clearly supported the Panchayat''s right to set up the bus stand. The relevant extract from the order, dated 29.7.2002 is as

follows:

The court is not making any comment on this aspect neither the transport department nor the Collector of the district are before the court, at

present But, where a bus stand, as a public utility service, will be located is without doubt any aspect in which the Nagar Panchayat is entitled to

express its views which the authorities are obliged to consider. If the High Court were to interfere at the slightest opportunity every time, the

elected members of the local bodies find the atmosphere on home ground a little difficult, it would not be conducive to the working of the local self

government. The State authorities also have to recognize the aspects on which local bodies are entitled to participate in matters of planning. The

only constraint of the local bodies will be that they cannot violate the law; neither can State Respondents. This is. a matter which should be

dismissed within the Nagar Panchayat first so that the members can place their views on record and convey them to the State Respondents.

(emphasis added)

20. I fail to see how the three earlier orders passed by the court can be said to have any adverse effect on the claim of the Petitioner in the case in

hand. It appears to me that unfounded and misconceived technical objections were sought to be raised by Respondent No. 7 since No. material

points were available to her for resisting the Petitioner''s claims on merits.

21. The District Magistrate, Vaishali similarly did not have anything to resist the claim of the Petitioner on merits. Therefore, in the counter affidavit

filed on his behalf statement is made, that is plainly contrary to his own letter issued earlier in this matter. In paragraphs 4 and 5 of the counter

affidavit it is stated as follows:

4. That vide letter No. 343 dated 30.3.2002 a proposal was sent to the Commissioner-com-Secretary, North Bihar Regional Transport Authority,

Muzaffarpur for giving permission to Smt. Ranjana Rani to manage the bus stand at Mahnar as she has offered 15 Kathas 3 dhurs land of Plot

Nos. 4671, 4676, 4645 and 4675 of Mahnar village. North Bihar Regional Transport Authority is competent authority to give permission for

managing the bus stand vide Rule 191 of Motor Vehicle Rules, 1992.

5. That North Bihar Regional Transport Authority gave permission to Smt. Ranjana Rani for managing the bus stand.

xx xx xx xx xx

22. It is simply incorrect and wrong to say that by letter No. 343 dated 30.3.2002 the District Magistrate had sent the proposal for giving

permission to Smt. Ranjana Rani to manage the bus stand at Mahnar. The aforesaid letter of the District Magistrate is at Annexure-12. It is

referred to in this judgment earlier and the relevant passage from the letter is reproduced below:

Uprokta Prashtawit aawedan main Smt. Ranjana Rani Pati Amrendra Kumar Gram Sultanpur Thana Desri Zila Vaishali dawara bhumi Sambandhi

Kagjat Khata Shankhya 1795 Kheshra Shnkhya 4571 Rakwa 15 katha 5 dhur mauja mahnar diya gaya hai jo har dristikon se uchit pratit hota hai.

Ishliye Smt. Ranjana Rani ke naam Prashtawit Bhumi par bus, taxi, maxi stand sanchalan ki anumati sarkari prabdhano ke antragat nagar

panchayat, mahnar ko dene ke anushansha kiya jata hai.

(emphasis added)

23. The counter affidavit sworn by the Secretary North Bihar Regional Transport Authority and filed on behalf of the Authority, is equally

worthless and without any substance. It appears to this Court that either the affidavit was filed mindlessly or worse, it contains deliberate mis-

statement of facts. In the counter affidavit it is mechanically stated that the Authority was competent to grant permission for setting up the bus stand

and it has deemed fit to grant permission to Respondent No. 7 after consultation ""with such local body namely S.D.O. Mahnar Nagar Panchayat,

Mahnar and the D.M. Vaishali, Vaishali"". The statement was made in the counter affidavit without enclosing any supporting materials and hence, on

2.9.2003 the Government Advocate prayed for some time to produce the materials in support of the statement made in the affidavit. The court

allowed him the time as prayed for but commenting upon the statement made in the counter affidavit made the following observation:

While granting time to the Govt. Advocate as prayed by him, this Court would like to point out one or two things. First, the Respondents seem to

consider the Sub-divisional Officer, Mahnar and the Dist. Magistrate, Vaishali as local bodies. That appears to be the level of understanding of

Respondents 5 and 6 and of the deponent of this affidavit who is Secretary, North Bihar Regional Transport Authority, Muzaffarpur.

24. As regards the question of any consideration and report from the Mahnar Nagar Panchayat, it is the very same Nagar Panchayat which is the

Petitioner before this Court with the grievance that it has been illegally denied the right to set up and operate the Mahnar bus stand. This Court is,

therefore, prima facie of the view that there was absolutely no report or any consideration within the meaning of Section 117 of the Motor Vehicles

Act and this statement is made either without understanding its import or with'' a view to mislead the court. Nevertheless, the court will give time to

the Govt. Advocate, as prayed for, to find out if there is any such report and if there be any such report, to produce the same before the court.

25. On the next dated (11.9.2003) the Government Advocate informed the court that he had not received any reply to his wireless message and

on that date the hearing of the case was concluded.

26. In the facts and circumstances of the case the authority, particularly its Secretary, deserves a strong reprimand from the court.

27. The manner in which this case was conducted before the court gives rise to the suspicion that everything was not above board and permission

was granted to Respondent No. 7, in preference to the Petitioner, in a malafide way. This Court is unable to see how the Authority could turn

around in the face of all the materials and reports as indicated above and without any basis give permission to Respondent No. 7 in preference to

the Petitioner Nagar. Panchayat at whose instance the whole process was initiated.

28. For the reasons discussed above, it is evident that the impugned orders as contained in Annexures-15 and 16 are completely bad and

untenable in the eyes of law. The two orders along with all consequential orders/decisions/actions are accordingly set aside and the Regional

Transport Authority is directed to reconsider the Petitioner''s application for setting-up and operating the bus stand Taxi, Maxi, Jeep Commander

stand at Mahnar. Having regard to the facts of this case it will be open to the Nagar Panchayat to select a suitable piece of land other than the one

belonging to Respondent No. 7. This, the Nagar Panchayat can do on the basis of the old applications or by issuing a fresh public notice. The

Nagar Panchayat may renew its application or may make a fresh, modified application within two months from today. The Regional Transport

Authority will take a decision on that application in accordance with law and in the light of this judgment within six weeks of the receipt of the

application. Till a final decision is taken on the application of the Nagar Panchayat the district administration shall control and maintain the bus stand

at Mahnar and tolls, if any, shall be collected by the staff of the district administration till a final decision as directed above is taken by the

Authority.

29. In the result, this writ petition is allowed. There will be no order as to costs.