

Ajay Choudhary vs The Ranchi Municipal Corporation ... on 7 June, 2022

Author: Rajesh Shankar

Bench: Rajesh Shankar

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.2305 of 2020

1. Ajay Choudhary
2. Parmeshwar Sahu
3. Ram Balak Sahu
4. Jay Ram Prasad
5. Dilip Baitha
6. Anwar Tarik
7. Sonu Kumar Jaishwal
8. Jai Prakash Choudhary
9. Dhanawa Devi
10. Chhotu Kumar Choudhary
11. Sushma Devi
12. Aniket Choudhary
13. Bibha Devi
14. Soma Prasad

15. Satish Kumar Jaiswal

16. Pankaj Kumar

17. Sangeeta Jaiswal

18. Shakuntala Devi

19. Santosh jaiswal

20. Sanju Kumar Nishad

21. Suman Tirkey

22. Rakesh Mehta

23. Abdul Rauf

24. Godawari Devi

25. Santoshi Choudhary

26. Balram Nishad

27. Manoj Choudhary

28. Sujit Kumar Jaiswal

29. Manoj Kumar

30. Abhay Kumar

31. Nitesh Kumar

32. Santosh Kumar

33. Sujit Kumar

34. Krishna Nishad

35. Mukesh Kumar Rana

36. Pooja Kumari

37. Smt. Kusum Devi

38. Rohit Kumar

39. Smt. Smriti Devi Petitioners.

-Versus-

1. The Ranchi Municipal Corporation through its Municipal Commissioner, Ranchi.

2. The Municipal Commissioner, Ranchi Municipal Corporation, Ranchi.

3. The Deputy Municipal Commissioner, Ranchi Municipal Corporation, Ranchi.

4. Vijay Verma

5. Ajay Verma

6. Md. Zafar

7. Vigan Saw

8. Anup Kumar

9. Pradeep Thakur

10. Jagdish Mandal Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners : Mr. Ajit Kumar, Sr. Advocate Ms. Akriti Shree, Advocate For Res. Nos.1 to 3 :
Mr. Prashant Kumar Singh, Advocate For Res. Nos.4 to 10: Mr. Sumeet Gadodia, Advocate

Order No.14 Date: 07.06.2022

1. The present writ petition has been filed for quashing the letters dated 02.07.2020 (Annexure-10 series to the writ petition) issued by the Deputy Municipal Commissioner, Ranchi Municipal Corporation, Ranchi-respondent no.3, whereby allotments of respective shops of the petitioners

have been cancelled.

2. The factual background of the case, as stated in the writ petition, is that the petitioners/their fathers were street vendors engaged in selling fish, chicken etc. in Ratu Road area (Khadgarha Market) and businesses of some of the petitioners were recognized by the Ranchi Municipal Corporation by issuing licences under Section 407 of the Ranchi Municipal Corporation Act, 2001. Registration Certificates were also issued to some of the petitioners by Food Safety Administration, Department of Health, Government of Jharkhand, Ranchi under Food Safety and Standards Act, 2006. RMC launched an encroachment drive in the year 2011 and thereafter notice dated 08.11.2011 was served upon the petitioners for eviction within 3 days. Some of the petitioners and the private respondents challenged the said notice by filing a writ petition being W.P.(C) No.6842 of 2011, which was disposed of vide order dated 19.12.2011 giving liberty to file representation(s) before the Chief Executive Officer, RMC, Ranchi and on filing of such representation(s), the said authority was to consider the same and pass appropriate order. In compliance of the said order, the petitioners filed representation before the concerned authority of RMC whereupon they were informed that whenever any shop would be constructed they would have preferential right over the same. In the meantime, the Parliament promulgated the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereinafter to be referred as 'the Act, 2014') to protect the rights of urban street vendors, to regulate street vending activities and for matters connected therewith or incidental thereto. The State of Jharkhand by invoking powers under Section 36 of the Act, 2014 thereafter framed the Jharkhand Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2015. Subsequently, the State of Jharkhand, in terms with Section 38 of the Act, 2014 prepared a scheme for Street Vendors known as Jharkhand Street Vendors (Protection of Livelihood and Regulation) Scheme, 2017. RMC made survey of the street vendors including the petitioners after dividing the Ranchi Municipal Area into 44 Urban Local Bodies and the vending zones were constructed at few places like Atal Smriti Vendor Market, Jaypal Singh Stadium, Ranchi and Madhukam, Khadgarha Market, Ratu Road, Ranchi. The petitioners, thereafter, made joint representation before the respondent no.2 requesting inter alia to make allotment of shops according to their names and addresses furnished by them. The pictures of respective temporary vending area were also enclosed with the representation so that no outsider might obtain allotment of the shop. Lottery was held by the RMC under the Chairmanship of Deputy Mayor on 26.10.2019 for allotment of 39 shops, which was also videographed. The respondent no.3 vide letters dated 06/08.11.2019 informed the petitioners that they were allotted the respective shops through lottery process and asked them to deposit rent for six months amounting to Rs.7,450/- plus GST @ 18% i.e. Rs.1,341/-; total Rs.8,791/-. The petitioners immediately deposited the required amount and to that effect, acknowledgement receipts were also issued to them. They were also given possession of their respective shops in which they made investment for installing shutters, deep freezers as well as interior fittings. They also applied for obtaining electrical connections. Despite the said fact, the respondent no.3 vide letters dated 02.07.2020 arbitrarily cancelled the allotment of the said shops, which gives rise to filing of the present writ petition.

3. The learned senior counsel for the petitioners submits that the impugned letters dated 02.07.2020 have been issued in violation of the principles of natural justice, as no opportunity of hearing was provided to the petitioners before passing the orders as contained in the impugned

letters. The shops in question are the only source of their livelihood. They have also invested their hard earned money in their allotted shops for betterment of their business. The said allotment cannot be cancelled in a summary manner that too without assigning any reason. It is further submitted that the impugned letters are arbitrary, whimsical and without jurisdiction and against the very object of the Act, 2014. Learned senior counsel for the petitioners also submits that by invoking power under Section 38 of the Act, 2014, a Scheme known as Jharkhand Street Vendors (Protection of Livelihood & Regulation) Scheme, 2017 was framed by the State Govt. vide notification dated 31.03.2017. Under Clause 20.5 of the said scheme, the allotment was required to be done through lottery which was duly followed while making allotment of the said shops to the petitioners. Moreover, there are several infirmities in the enquiry report on perusal of which it would be evident that the same is a table report, as date and time of visiting the spot has not been mentioned in the same. It is further submitted that some of the family members of the petitioners are also the street vendors and their names were mentioned in the list prepared under the said scheme duly approved by the respective Ward Councillors. The notice for conducting lottery was kept in public domain by publishing it on Information Display Board of the RMC and the objections were also invited. As such, the contention of the private respondents that no public notice was issued before holding the lottery is completely misconceived.

4. The learned counsel for the respondent-RMC submits that a complaint was received regarding malpractices in allotment of shops at Khadgarha market and thereafter a Committee was constituted vide office order as contained in letter no.1029 dated 11.06.2020 to enquire into the said allegations. The Committee submitted its report dated 24.06.2020 observing that more than one person from same family have been allotted the shops. It was further observed that out of thirty nine shops, eighteen shops were allotted among six families. Having observed that, the Committee made recommendation to cancel the said allotment of the shops and to constitute a fresh committee for the allotment of the same. On the basis of the report of the Committee, the allotment of said 39 shops were cancelled vide letters dated 02.07.2020. It is further submitted that the shops at Khadgarha vegetable market were constructed out of government fund and the same were to be allotted to the street vendors who were previously running their business around the locality where Khadgarha vegetable market is constructed. The construction of Khadgarha vegetable market and subsequent allotment of the shops to the street vendors were made under a welfare scheme for the people in the lowest strata of society with the motive of general welfare of maximum number of poor people. Since number of shops constructed was less than the street vendors previously engaged in their business in the same locality, it was decided to hold a lottery for allotment of the shops, however, in enquiry it was found that out of 39 shops, 18 shops were allotted among 6 families and if it was allowed to continue, it would have not only defeated the purpose of general welfare of the maximum number of persons in need but would have also tantamounted to fraud and malpractice/manipulation in distribution of shops.

5. The learned counsel for the respondent nos.4 to 10 (private respondents) submits that RMC had conducted lottery behind their back and the notice of the same was never communicated to them. It is further submitted that the RMC had favoured the petitioners while allotting the shops due to which legitimate claim for allotment of the shops at Khadgarha Market was denied to the respondent nos. 4 to

10. Khadgarha Market over which the shops in question are situated falls under Ward No.29 of the RMC and the Ward Councillor, namely, Soni Parween vide letter dated 19.08.2021 addressed to the RMC had informed that no concurrence was obtained from her and she was not aware of the fact as to whom the shops were allotted.

6. Heard the learned counsel for the parties and perused the materials available on record. The petitioners are aggrieved with the decision of the respondent authorities, cancelling allotment of shops earlier made in their favour.

7. The thrust of the argument of the learned senior counsel for the petitioners is that the impugned letters cancelling the allotment of shops were issued in violation of the principles of natural justice, since no opportunity of hearing was given to the petitioners. The allotments of the shops were made to the petitioners through lottery in terms with Clause 20.5 of the said Scheme and the notice for conducting the lottery was also published on the Information Display Board of the RMC and, thus, no infirmity was committed while making allotment of the shops. The enquiry report is just a table report without making spot verification.

8. Learned senior counsel for the petitioners puts reliance on the judgment of the Hon'ble Supreme Court rendered in the case of Union of India & Others Vs. Rajesh P.U. & Anr., reported in (2003) 7 SCC 285, wherein it has been held that when special committee extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as 184 unsuccessful candidates and ultimately found that except 31 candidates being selected undeservedly there was no infirmity whatsoever in the selection of the other successful candidates. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selection is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing the principle of proportionality to the winds in going farther than what was strictly and reasonably required to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selection, which was wholly unwarranted and unnecessary even on the factual situation, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

9. Learned senior counsel for the petitioners puts further reliance on the judgment of the Hon'ble Supreme Court rendered in the case of Onkar Lal Bajaj & Others Vs. Union of India & Anr., reported in (2003) 2 SCC 673, wherein it has been held that the solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories -- tainted and the rest -- on a par is wholly unjustified, arbitrary and unconstitutional being violative of Article 14 of the Constitution. It has further been held that if media exposes that the allotments were made either to the high political functionaries themselves or their near and dear ones and the same is correct, then the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any such cases exposed by the media.

10. In the case of ITC Limited Vs. State of U.P. & Ors., reported in (2011) 7 SCC 493, the Hon'ble Supreme Court has held as under:-

"107. The position is, however, different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before a completed transfer is interfered on the ground of violation of the regulations, it will be necessary to consider two questions. The first question is whether the transferee had any role to play (fraud, misrepresentation, undue influence, etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable.

107.1. If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations:

(i) If public interest has neither suffered, nor is likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects.

(ii) On the other hand, if the violation of the regulations leaves or is likely to leave an everlasting adverse effect or impact on public interest (as for example when it results in environmental degradation or results in a loss which is not reimbursable), public interest should prevail and the transfer should be rescinded or cancelled.

(iii) But where the consequence of the violation is merely a short-

recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in consideration."

11. In the case of Popcorn Entertainment & Another Vs. City Industrial Development Corpn. & Anr., reported in (2007) 9 SCC 593, the Hon'ble Supreme Court has observed that the only ground taken in the final cancellation order was that the allotment had been made without calling for tenders and without resorting to the process of competitive bidding. However, much argument was also advanced in regard to the allegations which have been made out in the counter-affidavit before the High Court and in this Court. If an order is passed on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

12. In the case of Kranti Associates (P) Ltd. & Anr. Vs. Masood Ahmed Khan & Ors., reported in (2010) 9 SCC 496, the Hon'ble Supreme Court has held as under:-

"47. Summarising 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 lifeblood 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 Harvard Law Review 731- 37] .)

(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] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the 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".

13. On the other hand, the learned counsel for the private respondents submits that the notice for conducting lottery was not widely circulated due to which the private respondent have been deprived of participating in the lottery held for allotting the shops. It has been claimed that the impugned order of allotment of shops to the petitioners suffered from favouritism and was also not transparent. The said fact has also been corroborated by the enquiry report. Thus, the respondent no.3 has rightly cancelled the allotment of shops made in favour of the petitioners.

14. The learned counsel for the private respondents puts reliance on the judgment of the Hon'ble Supreme Court rendered in the case of Indian Oil Corporation Limited & Ors. Vs. Shashi Prabha Shukla & Anr., reported in (2018) 12 SCC 85, wherein it has been held as under:-

"33. Jurisprudentially thus, as could be gleaned from the above legal enunciations, a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non-negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts, etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order."

15. On perusal of the record it appears to this court that a notice was published by the respondent-RMC for the public auction of total 39 shops of meat, chicken and fish at Khadgarha vegetable market and it was decided to hold lottery for allotment of the said shops since the number

of applicants was more than the available shops. It transpires from Annexure-A to the supplementary counter affidavit of the respondent-State that the information for holding the lottery was not widely published, rather the same was displayed in the notice board of the RMC. Ward Councillor of Ward No.29 also wrote letter to the Municipal Commissioner, RMC, Ranchi alleging that the allotment of the shops were made without any communication to her and as per her information the shops were allotted to wrong persons. It further appears from the record that on the complaint of one Vikrant Vishwakarma, an enquiry committee was constituted by the respondent no.3 which was headed by the office superintendent consisting of other three members. The said Committee submitted its report on 24.06.2020 disclosing that on spot verification, they found that more than one shops were allotted to the members of the same family. It was further found that the rate of rent was lower than the rent of the RMC. The Enquiry Committee thus recommended for cancellation of allotment of the shops. The factual finding given by the said enquiry committee has not been controverted by the petitioners, rather they have claimed that more than one family members were running shops in the said market even before the allotment of shops were made and as such they were allotted the same after following due procedure. Be that as it may. Specific contention of the private respondents is that the notice for holding the lottery was not widely circulated as the same was not published in any local newspaper and, thus, they were deprived of participating in the lottery though some of them were also the petitioners of W.P.(C) No.6842 of 2011 wherein the Court had held that on filing of the representation(s) by the writ petitioners of that case before the Chief Executive Officer, R.M.C., Ranchi for allotment of shops, the said authority would consider the same and pass appropriate order.

16. It has been held in the judgments cited by the learned senior counsel for the petitioners that cancellation of entire selection process should not be done in a routine manner, rather the irregularity should be properly scrutinized and every possible step should be taken to operate the process. I respectfully agree with the proposition laid down in the said judgments, however, the facts and circumstances of the present case undisputedly suggest that the authorities while making allotment of the shops under the said scheme had not widely circulated the notice for public auction and thus had committed serious procedural lapse due to which the several needy persons were deprived of participating in the said process which could not have been cured merely by cancelling the allotment of few persons. Thus, the respondent no.3 has rightly issued the impugned letters cancelling the entire allotment process.

17. The writ petition being devoid of merit is, accordingly, dismissed.

(Rajesh Shankar, J.) Sanjay/AFR