

**SUPREME COURT OF INDIA**

Asit Kumar Kar

Vs.

State Of West Bengal

Writ Petition (Civil) No.110 of 2008

(Markandey Katju and R.M. Lodha )

21.01.2009

**ORDER**

1. These writ petitions have been filed under Article 32 of the Constitution of India.

2. It appears that the All Bengal Excise Licensees Association had filed a writ petition in the High Court of Calcutta challenging the policy of the State of West Bengal of granting additional licences for foreign liquor and country made spirit. That petition was filed through the General Secretary of the Association. Subsequently, the writ petition was withdrawn.

3. During the pendency of the writ petition, and before it was withdrawn, an interim order had been passed by the High Court staying the grant of licences. A contempt petition was filed before the High Court alleging that licences were granted in violation of the stay order of the High Court, but that contempt petition was dismissed. Against that order dismissing the contempt petition, a special leave petition was filed in this Court which was decided by this Court in the judgment reported as *All Bengal Licensees Association v. Raghendra Singh & Ors.*<sup>1</sup>.

4. In that contempt petition, the Court accepted the apology of the alleged contemnors, but having done so, in paragraph 40 of the judgment it directed cancellation of the licences for the auctions held on 20.03.2005, 21.03.2005 and 22.03.2005 and directed that their businesses shall be stopped forthwith.

5. The aforesaid direction in paragraph 40 of the judgment was passed without hearing the persons whose licences were ordered to be cancelled. In fact even the impleadment applications of such persons were rejected.

6. It is a basic principle of justice that no adverse orders should be passed against a party without hearing him. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence.

7. In the Seven Judge Constitution Bench of this Court, *A.R. Antuley v. R.S. Nayak & Anr.*<sup>2</sup> it has been observed in paragraph 55 thereof: "so also the violation of the principles of natural justice renders the act a nullity".

8. One of the counsel relied upon another Five Judge Constitution Bench decision in *Rupa Ashok Hurra v. Ashok Hurra*<sup>3</sup>. It is true that in paragraph 9 of the said judgment it has been observed that this Court under Article 32 of the Constitution cannot hold as invalid a judgment of this Court by treating it as a nullity. However, the aforesaid judgment does not say that we cannot pass a recall order when that order has been passed without hearing a party.

9. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in *All Bengal Licensees Association v. Raghendra Singh & Ors.*<sup>4</sup> cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences.

10. In these circumstances, we recall the directions in paragraph 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate Court. The writ petitions are disposed of with these directions.

<sup>1</sup>2007 (11) SCC 374

<sup>2</sup>1988 (2) SCC 602

<sup>3</sup>2002 (4) SCC 388

<sup>4</sup>2007 (11) SCC 374