

RAJASTHAN HIGH COURT

Vijay Kumar

Vs.

State of Rajasthan

Civil Writ Petn. Nos. 6759 of 2003, and 568, 218, 1033 of 2004
(Sunil Kumar Garg, J.)

20.04.2004

ORDER

Sunil Kumar Garg, J.

1. All the aforesaid writ petitions are being decided by this common order as in all of them common questions of law and facts are involved.

S.B. Civil Writ Petition No. 6759/2003

2. This writ petition under Arts. 226 and 227 of the Constitution of India has been filed by the petitioner against the respondents on 29-11-2003 with the prayer that by appropriate writ, order or direction, the judgment dated 7-11- 2003 (Annexure P/4) passed by the respondent No. 2 State Transport Appellate Tribunal (for short "the Tribunal") by which the Tribunal allowed the appeals of the respondent Nos. 4, to 6, namely, Nirmal Kumar, Shiv Bhagwan and Satvir respectively and set aside the order dated 13-6-2000 (Annexure P/2) passed by the respondent No. 3 Regional Transport Authority, Bikaner rejecting the applications of the respondent Nos. 4 to 6 for renewal of the permits on the inter-State route Bhadra- Hissar via Bagla, be quashed and set aside.

3. The case of the petitioner as put forward by him in this writ petition is as follows:-

There is an inter-State route Bhadra- Hissar via Bagla.

On 9-7-1997, an agreement (Annexure P/1) was entered into between the State of Rajasthan and Haryana and it came to be published in the official gazette dated 15-7-1997 and by that agreement Annexure P/1, it was agreed upon that the number of permits for the Rajasthan nominees for the route Bhadra-Hissar via Bagla would be 4

to provide daily four return services.

Thereafter, on 29-9-1999 the respondent Nos. 4 to 6 submitted applications for renewal of their permits on the route in question before the respondent No. 3 Regional Transport Authority, Bikaner, but the respondent No. 3 Regional Transport Authority through order dated 13-6-2000 (Annexure P/2) rejected their applications.

The further case of the petitioner is that after rejection of the applications of the respondent Nos. 3 to 6 for renewal through order Annexure P/2 dated 13-6-2000, the respondent No. 3 Regional Transport Authority considered the fresh applications against the then vacancies existing under the agreement Annexure P/1 and through order dated 22-7-2000 (Annexure P/3) granted four permits in favor of following four persons:-

(1) Vijay Kumar

(Petitioner in writ No. 6759/2003)

(2) Mangiram

(Petitioner in writ No. 1033/2004)

(3) Om Prakash

(Petitioner in writ No. 568/2004)

(4) RadheyShyam

(Petitioner in writ No. 218/2004)

The further case of the petitioner is that on 10-11-2003 he came to know that the respondent Nos. 4 to 6, whose applications for renewal were rejected by the respondent No. 3 Regional Transport Authority through order Annexure P/2 dated 13-6-2000 had preferred appeals before the respondent No. 2 Tribunal and the respondent No. 2 Tribunal through common judgment dated 7-11-2003 (Annexure P/4) allowed the appeals of the respondent Nos. 4 to 6 and set aside order of the respondent No. 3 Regional Transport Authority dated 13-6-2000 (Annexure P/2).

It may be stated here that during the pendency of the appeals of the respondent Nos. 4 to 6 before the respondent No. 2 Tribunal, Mangiram and Om Prakash (Petitioners of writ Nos. 1033/04 and 568/04 respectively) in whose favour permits on the route in question were granted by the respondent No. 3 Regional Transport Authority through

order Annexure P/3 dated 22-7-2000, submitted applications for impleading them as party respondents and their applications for impleading were opposed by the respondent Nos. 4 to 6 and the respondent No. 2 Tribunal through order dated 18-9-2003 rejected the applications of Mangiram and Om Prakash for impleading as party respondents, but they were allowed to be heard through their counsel in the appeals of the respondent Nos. 4 to 6.

The further case of the petitioner is that in the appeals of the respondent Nos. 4 to 6 before the respondent No. 2 Tribunal, he was not at all heard and no notices of these appeals were ever served upon him also and in absence of that, he had no opportunity to participate in these appeals and thus, no opportunity of hearing was afforded to him before passing the impugned appellate judgment Annexure P/4 dated 7-11-2003 by the respondent No. 2 Tribunal. Hence, this writ petition with the prayer as stated above.

In this writ petition, the petitioner has challenged the impugned appellate judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal on various grounds and the main ground is that the applications of the respondent Nos. 4 to 6 for renewal of the permits on the route in question were rejected by the respondent No. 3 Regional Transport Authority through order Annexure P/2 dated 13-6-2000 and thereafter, the respondent No. 3 Regional Transport Authority through order dated 22-7-2000 (Annexure P/3) granted permit in favour of the petitioner for the route in question and therefore, in these circumstances, in the appeals filed by the respondent Nos. 4 to 6 against the rejection of their applications for renewal through order Annexure P/2, before the respondent No. 2 Tribunal, the petitioner was a necessary party to those appeals, as the respondent Nos. 4 to 6 sought renewal of the of the permits for the same route for which the petitioner Vijay Kumar and three others, namely, Mangiram, Om Prakash and RadheyShyam (Petitioners of writ Nos. 1033/04, 568/04 and 2/8/04 respectively) were granted permits, but he was not impleaded nor any notices of these appeals were ever served upon him and thus, the impugned appellate judgment Annexure 4 dated 7-11-2003 was passed by the respondent No. 2 Tribunal in absence of the petitioner and therefore, it is not only void but illegal, without jurisdiction and violative of Article 14 of the Constitution of India and also against the principles of natural justice as before passing it, no opportunity of hearing was given to the petitioner. Hence, the impugned judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal cannot be sustained and liable to be quashed and set aside.

A reply to the writ petition was filed by the respondent Nos. 4 to 6 and their case is

that since they have preferred appeals before the respondent No. 2 Tribunal against the order of rejecting their applications for renewal through order Annexure P/2 dated 13-6-2000 prior to passing of the order Annexure P/1 dated 22-7-2000 granting permit in favour of the petitioner, therefore, in these circumstances, it was not incumbent upon them to implead the petitioner as one of the respondents to the appeals filed by them and therefore, the petitioner was not at all a necessary party to the appeals filed before the respondent No. 2 Tribunal.

Apart from this, it was further submitted by the respondent Nos. 4 to 6 that there is no basic illegality or irregularity in the impugned judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal and thus, no interference is called for with the same in exercise of power under Arts. 226 and 227 of the Constitution of India. Hence, this writ petition deserves to be dismissed.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and gone through the materials available on record.

5. During the course of arguments it has been further submitted by the respondent Nos. 4 to 6 that in pursuance of the appellate judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal, the respondent No.3 Regional Transport Authority through order dated 6-12-2003 renewed the permits of the respondent Nos. 4 to 6 for the route in question for five years and aggrieved from the renewal order dated 6-12-2003, the petitioner has also preferred a revision petition being No. 3/2004 before the respondent No. 2 Tribunal.

6. From perusing the averments made in the writ petition as well as in the reply and the documents filed by both the parties, the following facts have emerged:-

(i) That there is an inter-State route Bhadra-Hissar via Bagla.

(ii) That as per agreement (Annexure P/1) dated 9-7-1997 entered into between the State of Rajasthan and Haryana, it was agreed upon that the number of permits for the Rajasthan nominees for the route Bhadra-Hissar via Bagla would be 4 to provide daily four return services.

(iii) That thereafter, on 29-9-1999 the respondent Nos. 4 to 6 submitted applications for renewal of their permits on the route in question before the respondent No. 3 Regional Transport Authority, Bikaner, but the respondent No. 3 Regional Transport Authority through order dated 13-6-2000 (Annexure P/2) rejected their applications.

(iv) That after rejection of the applications of the respondent Nos. 4 to 6 for renewal of permits on the route in question through order Annexure P/2 dated 13-6-2000. the respondent No. 3 Regional Transport Authority considered the fresh applications against the then vacancies existing under the agreement Annexure P/1 and through order dated 22-7-2000 (Annexure P/3) granted for permits in favour of the following four persons :-

(1) Vijay Kumar

(Petitioner in writ No. 6759/2003)

(2) Mangiram

(Petitioner in writ No. 1033/2004)

(3) Om Prakash

(Petitioner in writ No. 568/2004)

(4) RadheyShyam

(Petitioner in writ No. 218/2004)

(v) That thereafter, the respondent Nos. 4 to 6 feeling aggrieved by the order dated 13-6-2000 (Annexure P/2) passed by the respondent No. 3 Regional Transport Authority rejecting their applications for renewal of the permits on the route in question, preferred separate appeals before the respondent No. 2 Tribunal and their appeals were consolidated by the respondent No. 2 Tribunal.

(vi) That in the appeals filed by the respondent Nos. 4 to 6 , Mangiram and Om Prakash in whose favor permits on the route in question were granted by the respondent No. 3 Regional Transport Authority through order Annexure P/3 dated 22-7-2000, submitted applications for impleading them as party respondents and their applications for impleadment were opposed by the respondent Nos. 4 to 6 and the respondent No. 2 Tribunal through order dated 18-9-2003 rejected the applications of Mangiram and Om Prakash for impleading as party respondents, but they were allowed to be heard through their counsel in the appeals of the respondent Nos. 4 to 6.

(vii) That thereafter, the respondent No. 2 Tribunal through common judgment dated 7-11-2003

(Annexure P/4) allowed the appeals of the respondent Nos. 4 to 6 and set aside the order of the respondent No. 3 Regional Transport Authority dated 13-6-2000 (Annexure P/2) disallowing renewal of permits on the route in question.

(viii) that in pursuance of the judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal, the respondent No. 3 Regional Transport Authority through order dated 6-12-2003 renewed the permits of the respondent Nos. 4 to 6 for the route in question for five years.

(ix) That aggrieved from the order dated 6-11-2003 by which permits of the respondent Nos. 4 to 6 were renewed, the petitioner has also preferred a revision petition being No. 3/2004 before the respondent No. 2 Tribunal and the same is pending.

(x) That in the appeals, which were filed before the respondent No. 2 Tribunal, the respondent Nos. 4 to 6 did not add or implead the petitioner as one of the respondents nor the petitioner applied there to become party.

(xi) That the respondent No. 2 Tribunal while passing the judgment Annexure P/4 dated 7-11-2003 had not set aside the order Annexure P/3 dated 22-7-2000 granting four permits in favor of Vijay Kumar (present petitioner), Mangiram, Om Prakash and RadheyShyam (petitioners of writ petition Nos. 1033/04, 568/04 and 218/04 respectively).

(xii) That thus, when the judgment Annexure P/4 dated 7-11-2003 was passed by the respondent No. 2 Tribunal, the order Annexure P/3 dated 22-7-2000 was also in force and not only this, when order dated 6-12-2003 was passed by the respondent No. 3 Regional Transport Authority renewing permits in favor of the respondent Nos. 4 to 6 for the route in question for five years, the order Annexure P/3 dated 22-7-2000 was also in force and the order Annexure P/3 dated 22-7-2000 and the judgment Annexure P/4 dated 7-11-2003 are contradictory against each other and by the order dated 6-12-2003, renewal of permits was granted in favor of the respondent Nos. 4 to 6 for the same route for which the petitioner Vijay Kumar and three others, namely, Mangiram, On Prakash and RadheyShyam (petitioners of writ petition Nos. 1033/04, 568/04 and 218/04 respectively) were granted permits through order Annexure P/3 dated 22-7-2000.

7. The question for consideration is whether in the facts and circumstances just

mentioned above, the petitioner can be said to be aggrieved person from the appellate judgment Annexure P/4 dated 7-11-2003 and consequential order dated 6-12-2003 or not and whether the petitioner was necessary party to the appeals filed by the respondent Nos. 4 to 6 before the respondent No. 2 Tribunal.

Who is an aggrieved person?

8. The expression "aggrieved person" denotes an elastic, and to some extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioners' interest, and the nature and the extent of the prejudice or injury suffered by them. Courts have sometimes put a restriction and sometimes a wide construction on the expression "aggrieved person."

9. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or cause him some prejudice in one form or another. A person aggrieved has been understood to mean one "who has a genuine grievance because an order has been made which prejudicially affects his interest."

10. In the words of James, L.J. *Sidebotham Re*, (1880) 14 Ch D 458 (465).

"The words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision had been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something."

11. Keeping the above observations in mind, if the facts of the present case are examined, it can easily be said that the petitioner is an aggrieved person from the appellate judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal and the consequential order dated 6-12-2003 passed by the respondent No.3 RTA because by the appellate judgment Annexure P/4 and consequential order dated 6-12-2003, the permits of the respondent Nos. 4 to 6 were renewed for the same route for which the petitioner Vijay Kumar and three others, namely, Mangiram, Om Prakash and RadhyeShyam (petitioners of writ petition Nos. 1033/04, 568/04 and

218/04 respectively) were granted permits through order Annexure P/3 dated 22-7-2000 and thus, appellate judgment Annexure P/4 and consequential order dated 6-12-2003 certainly prejudice and affect the interest of the petitioner.

12. Thus, it is held that the petitioner is an aggrieved person from the appellate judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal and consequential order dated 6-12-2003 passed by the respondent No. 3 Regional Transport Authority.

Whether petitioner was necessary party before the respondent No.2 Tribunal ?

13. On point whether the petitioner was necessary party before the respondent No. 2 Tribunal or not, it may be stated here that a person is necessary party in any proceedings, if his presence is necessary to decide the matter in question. Furthermore, if any litigation, which may lead to a result which affects the right or curtails the legal right of a person, that person has a right to be impleaded in the proceedings.

14. In the present case, since by the impugned appellate judgment Annexure P/4 dated 7-11-2003 passed by the respondent No. 2 Tribunal in the appeals filed by the respondent Nos. 4 to 6 and consequential order dated 6-12-2003, the rights of the petitioner have been affected therefore, he was aggrieved as well as necessary party before the respondent No. 2 Tribunal in the appeals filed by the respondent No. 4 to 6.

15. Thus, it is held that the petitioner was necessary and aggrieved party and non impleadment of the petitioner as one of the respondents in the appeals filed by the respondent Nos. 4 to 6 before the respondent No. 2 Tribunal, amounts to denial of right to the petitioner, who was aggrieved , interested and necessary party, and such denial of right results in negation of the fair and just procedure offending Article 14 of the Constitution of India. In this respect, the decision of the Hon'ble Supreme Court in *M/s. Neyvely Lignite Corpn. Ltd. v. Spl. Tehsildar (Land Acquisition), Neyvely'* may be referred to.

16. Therefore, the findings, of the respondent No. 2 Tribunal when it rejected the applications of Mangiram and Om Prakash (petitioners of writ petition Nos. 1033/04 and 568/04 respectively) for impleading as party respondents in the appeals filed by the respondent Nos. 4 to 6 become erroneous one because the case of the petitioner and the case of these two persons, namely Mangiram and Om Prakash stand on the same footing and if the petitioner was necessary and aggrieved party, then these two

persons Mangiram and Om Prakash were also necessary and aggrieved persons therefore, the findings recorded by the respondent No. 2 Tribunal rejecting the applications of Mangiram and Om Prakash for impleading them as party respondents are erroneous one and the same cannot be sustained and liable to be set aside.

17. Had the applications of Mangiram and Om Prakash for impleadment as party respondents would have been allowed by the respondent No. 2 Tribunal, the natural consequences of that would be that the appeals would have been amended in such manner as necessary as in case a party is added to the plaint or appeal and thereafter, amended appeals would have been filed by the respondent Nos. 4 to 6 and thereafter, opportunity to file reply would have been given to the added party. However, this has not happened in this case. Therefore, from this point of view also, the findings of the respondent No. 2 Tribunal rejecting the applications of Mangiram and Om Prakash for impleading as party respondents to the appeals, filed by the respondent Nos. 4 to 6 are wholly erroneous one and against the basic principles of law.

18. When Mangiram and Om Prakash (petitioners of writ petition Nos. 1033/04 and 568/04 respectively) were aggrieved and necessary party, simply allowing them to be heard in appeals without adding them as party respondents would not serve the purpose because since they were not made party-respondents, they could not file reply.

19. There is no dispute on the point that the impugned judgment Annexure P/4 dated 7-11-2003 was passed by the respondent No. 2 Tribunal in absence of the petitioner and by that judgment Annexure P/4, the right and interest of the petitioner were adversely affected.

20. One of the essential requirements of natural justice is that the Tribunal should give a full and fair opportunity to every party concerned of being heard. Furthermore, the persons whose rights are to be affected must be given notice of the case.

21. In the present case, since no notice or opportunity of hearing was given to the petitioner before passing the impugned judgment Annexure P/4 dated 7-11-2003, which prejudicially affects the right and interest of the petitioner, therefore, the same cannot be sustained being against the principles of natural justice.

22. It may be stated there that the High Court under Arts. 226 and 227 of the Constitution of India may quash the order or decision of an inferior Tribunal on the following grounds:-

(a) That the impugned order or decision is without jurisdiction, or against the

principles of natural justice, or involves non exercise of jurisdiction, or a grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law or law apparent on the face of the record, or that the finding is 'perverse' being founded on no material whatever.

(b) That the exercise of the jurisdiction under Article 227 does not amount to exercising the power of appeal or revision or question of fact or of law not affecting jurisdiction.

(c) That the Tribunal has proceeded on a wrong interpretation of the relevant statute, resulting in injustice.

23. In the present case, since the impugned appellate judgment of the respondent No. 2 Tribunal dated 7-11-2003 (Annexure P/4) is against the principles of natural justice as before passing it, though the petitioner was necessary and interested party, but no notice or opportunity of being heard was given to the petitioner, therefore, the same cannot be sustained and liable to be quashed and set aside and consequently, the consequential order dated 6-12-2003 passed by the respondent No. 3 Regional Transport Authority in pursuance of appellate judgment Annexure P/4, also cannot be sustained and liable to be quashed and set aside and this writ petition deserves to be allowed and it would be just and proper to remand the case back to the respondent No. 2 Tribunal for a fresh decision.

(Om Prakash v. State of Rajasthan) ²

(Mangiram v. State of Rajasthan) ³

24. The cases of the petitioners of these two writ petitions, namely Mangiram and Om Prakash also stand on the same footing and at par with the petitioner of S.B. Civil Writ Petition No. 6759/2003 and thus, for the reasons given above while deciding S.B. Civil writ petition No. 6759/2003, these two writ petitions also deserve to be allowed.

(RadheyShyam v. State of Rajasthan) ⁴

25. No doubt the case of the petitioner RadheyShyam of that writ petition stands on different footing on the point that he withdrew his application for impleading as party respondent before the respondent No. 2 Tribunal, as submitted by the learned counsel for the parties, but since the impugned appellate judgment Annexure P/4 passed by the respondent No. 2 Tribunal is going to be set aside and he was also granted permit on the route in question along with the other three petitioners, Vijay Kumar, Mangiram

and Om Prakash of writ petition Nos. 6759/04, 1033/04 and 568/04 respectively, through order Annexure P/3 dated 22-7-2000, therefore, in these circumstances, it would be just and proper that opportunity should also be given to the petitioner RadheyShyam to contest his claim before the respondent No. 2 Tribunal.

Accordingly, in the result, all the aforesaid writ petitions filed by the petitioners Vijay Kumar, Mangiram, Om Prakash and RadheyShyam are allowed and the impugned appellate judgment dated 7-11-2003 (Annexure P/4) passed by the respondent No. 2 State Transport Appellate Tribunal is quashed and set aside and consequently, the consequential order dated 6-12-2003 passed by the respondent No. 3 Regional Transport Authority in pursuance of appellate judgment Annexure P/4, is also quashed and set aside and the matter is remanded back to the respondent No. 2 Tribunal with the directions that first the respondent Nos. 4 to 6, namely, Nirmal Kumar, Shiv Bhagwan and Satvir shall amend their appeals filed before the respondent No. 2 Tribunal by way of filing amended appeals within 15 days from today by impleading the petitioners, namely, Vijay Kumar, Om Prakash, Mangiram and RadheyShyam as party respondents to those appeals and thereafter, the respondent No. 2 Tribunal shall give time to the petitioners (added party) to file reply and thereafter, after hearing all the parties concerned, the respondent No. 2 Tribunal shall decide the appeals afresh on merits in accordance with law within a period of two months from today. The parties are directed to appear before the respondent No. 2 Tribunal on 4-5-2004.

Petitions allowed.

Cases Referred.

1. (AIR 1995 SC 1004)
2. S.B. Civil Writ Petition No. 568/2004
3. S.B. Civil Writ Petition No. 1033/2004
4. S.B. Civil Writ Petition No. 218/2004