

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C)No.6969/2007.

Judgment delivered on April 13<sup>th</sup>, 2009

# NESTOR PHARMACEUTICALS  
LIMITED & ANR. .... Petitioner

Through : Mr. Sunil Gupta, Sr. Adv. with Mr.  
Vinay Garg, Adv.

Versus

\$ UNION OF INDIA THROUGH ITS  
SECRETARY (HEALTH) MINISTRY  
OF HEALTH & FAMILY WELFARE,  
NEW DELHI .... Respondent

^ Through : Mr. Pradeep K. Bakshi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**G.S. SISTANI, J:**

1. The present petition has been filed under Article 226 of the Constitution of India, 1950 and is directed against a notice dated 11.09.2007 bearing No.C.1301 9/7/2006 – vig., issued to the petitioner (Nestor Pharmaceuticals Limited) by the respondent (Union of India), and whereby the date of 24.09.2007 was fixed as the date of hearing for submissions by the petitioner on a proposal for its debarment for five years from undertaking any business with the respondent.

8

The petition is also directed against the order debarring F.No.23011/12/200 – supply, dated 21.03.2006, by virtue of which the respondent had suspended business dealings with the petitioner.

2. The brief facts of this case are that the petitioner is stated to be a manufacturer and supplier of medicines, medical kits and drugs and claims to have been supplying medicaments under several contracts to the respondents for the past more than fourteen years. The petitioner claims to have an excellent track record; and unblemished performance with respect to the contracts undertaken by it; and, further claims to have never defaulted in complying with the specifications and quality conditions that were required of it.
3. The petitioner's grievance is that in the last two and a half years several contracts were awarded to it by the Central Government and various State Governments, however, subsequently the contracts were cancelled on the pretext of an inquiry (pending) even though the supplies had been made.
4. It is the case of the petitioner that on 24.06.2005 the petitioner received a fax from the respondents communicating the decision of the 'Ministry of Health and Family Welfare' to suspend any further business dealing with the petitioner pending full inquiry into allegations of irregularities in procurement and supplies undertaken through National Procurement Support Agencies. The

9  
petitioner then states to have immediately written a letter dated 25.06.2005, to the respondents, requesting them to withdraw the decision as the petitioner was not aware of any such inquiry. It was further requested that the petitioner be allowed to explain to the respondents regarding any allegations made against it. The petitioner submits that when no further action was taken by the respondents, they were constrained to challenge the order dated 24.06.2005 by filing a writ petition bearing No.11136/2005 and in that petition this Court directed the respondents to give a detailed show cause notice to the petitioners. The operative portion of the Order reads as under:

*"[s]ince the petitioner has not been put to clear notice of the reasons that prevailed on the respondent to order suspension of business with the petitioner, the respondent herewith withdraws the impugned order dated June 24, 2005, without prejudice to its rights to issue a detailed Show Cause Notice and take whatever other actions are open to the respondent in law. All orders subsequent to the impugned order dated June 24, 2005 shall automatically stand withdrawn....."*

5. Learned counsel for the petitioner submits that pursuant to the above said order of the Court, a detailed show cause notice dated 05.08.2005, was issued to the petitioner by the Central Government but the allegations contained therein were flimsy and based upon frivolous grounds. Thereafter the petitioner gave its reply to the 'Ministry of Health and Family Welfare' vide letters dated 18.08.2005 and 27.08.2005. It is the case of the petitioner that after reply

was received by the respondent, the petitioner was awarded a contract worth Rs.4.00 crores by the State of Tamil Nadu vide notification dated 07.12.2005. Learned counsel for the petitioner further submits that, however, once again the respondent without assigning any reason or communication suspended business dealing with the petitioner and this act of the respondent compelled the petitioner to once again approach this Court by way of a Writ Petition bearing No.23718/2005. However, the petitioner subsequently withdrew its petition on an assurance given to it in the Court.

6. It is the case of the petitioner that even in the month of February, 2006, the respondent awarded a contract worth Rs.22,25,600/- in favour of the petitioner vide notification dated 07.02.2006. After all the arrangements had been made for packing of materials, labels, raw-materials and other items required for the manufacture and supply of medicines, the petitioner received a letter dated 09.03.2006 from Hindustan Latex Limited (procurement agency of the respondent) asking them not to deliver further supplies as agreed under the contract. The learned counsel for the petitioner submits that thereafter the petitioner wrote a letter dated 23.03.2006 to Hindustan Latex Limited, detailing about the loss that they would suffer on account of non-deliverance of the supplies, but the same fell on deaf ears and subsequently via a letter dated 18.04.2006, issued by Hindustan Latex Limited to the petitioner to contract dated

07.02.2006 between the parties was repudiated.

7. Learned counsel for the petitioner submits that in their reply dated 18.08.2005 and 27.08.2005 to the 'Ministry of Health and Family Welfare', the petitioner had specifically requested them to furnish copies of the documents/information relied upon by them and had also requested a personal hearing before any order is passed based upon the show cause notice, but to their utter shock and dismay, the order dated 21.03.2006 was communicated to the petitioner "suspending any further business with them pending full enquiry into the allegations". Learned counsel for the petitioner submits that post the order dated 21.03.2006, the petitioner thereafter received a copy of the letter dated 03.07.2007 whereby all the Health Secretaries to the respective State Governments had been asked not to procure any supplies from the petitioner.
8. Learned counsel for the petitioner further submits before this Court that the order dated 21.03.2006 to suspend business dealing with the petitioner pending inquiry is against the principles laid down in the case of **Saraswati Dynamics (P) Ltd. V. Union of India**, reported at 2003 IV Ad (Delhi) 225. The relevant extract relied upon by the petitioner is being reproduced herein below:-

"Suspension pending enquiry in service jurisprudence cannot be equated with suspension pending inquiry in the business dealing with the contractors on the approved list of the Government. When an employee is suspended pending inquiry, his relationship with the

12 ✓

employer does not come to an end; it is merely suspended. He even draws subsistence allowance during this period. Further in case he is ultimately acquitted in the departmental inquiry, he is duly compensated and restored to its original position as not only normally he gets full salary and allowances of the suspension period after his reinstatement, the suspension period is treated as period in services for all purposes. That could not be a situation in suspending a supplier pending inquiry inasmuch as even during suspension, the said contractor/supplier is precluded from having any business dealings with the Government. If ultimately, after show cause notice relating to final action, his explanation is treated as satisfactory and the action is dropped, the damage which has been caused due to suspension pending inquiry cannot be undone because during suspension period also he was not allowed to have any business dealings and this process cannot be reversed. What is lost during suspension period is lost forever. It is for this reason OM dated 30<sup>th</sup> June, 1975, itself clarifies that although suspension may be of a temporary character, the ultimate effect is the same as that of banning order.

In the aforesaid analysis, I am of the considered view that in the instant case the suspension order could not be restored to without affording the petitioner opportunity of being heard."

9. Learned counsel for the petitioner has further sought reliance upon the case of **Eursian Equipment and Chemicals Ltd. V. State of West Bengal and Another**, reported at (1975) 1 SCC 70. In this case the petitioner had been blacklisted by the Government and pending allegations of impropriety, the bids tendered by the petitioner were not considered by the respondent. The Court held:

"But for the order of blacklisting, the petitioner would have been entitled to participate in the purchase of cinchona. Similarly the respondent in the appeal would also have been entitled but for the order of blacklisting to tender competitive rates. [para 13].

Where the State is dealing with the individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others..... [para 19]

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. [para 20]"

10. It is the petitioner's grievance that instead of conducting the inquiry which was supposed to have commenced almost two years back, the respondent thereby issued a notice dated 11.09.2007, whereby the date of 24.09.2007 was fixed and the petitioner was asked to be present on the said date and make submissions with regard to the proposed debarment of the petitioner for a period of five years. Learned counsel for the petitioner submits that since the petitioner is unaware of any allegation or charge against it (in view of the fact that no additional charge or allegation has been made in the notice dated 11.09.2007), the petitioner does not know as to what it should state or explain to the respondent. Learned counsel for the petitioner submits that a bare reading of the notices dated 21.03.2006 and 11.09.2007 would illustrate that in fact the respondent had already held the petitioner guilty and have also proposed a debarment for five years. Learned

14

counsel for the petitioner argues that the opportunity of hearing being given to the petitioner is nothing but an empty formality. It is apparent that the respondents have already determined their course of action. Learned counsel for the petitioner further submits that to the best of its knowledge, till date no Inquiry Officer/Commission has been appointed by the respondent to look into the allegations of irregularities against the petitioner. Learned counsel also submits that it seems that the respondent is not interested in conducting any inquiry and is simply trying to hoodwink the petitioners.

11. Learned counsel for the petitioner submits that in respect of similar allegations, the World Bank has cleared the petitioner vide their decision dated 09.07.2007.
12. Learned counsel for the petitioner, thus, argues that the order of suspending business pending inquiry is against the tenets of law. It is contended that in the garb of pending inquiry, some persons/officials with their vested interests are trying to exclude the petitioner from supplying medicaments to the Government and more so because other bidders are not able to compete with the lesser bides of the petitioner. Learned counsel argues that this in turn is also putting an unnecessary burden on the public exchequer.
13. Learned counsel for the petitioner has further argued that this Court can within its power give a decision regarding an administrative matter and has in support thereof referred to the case of **Om Kumar and Others V. Union of India**,

15

reported at (2001) 2 SCC 386 and the relevant extract of which lays:

"54. Administrative action in India affecting fundamental freedoms has always been tested on the anvil of "proportionality" in the last fifty years even though it has not been expressly stated that the principle that is applied is the "proportionality" principle. For example, a condition in a licence issued to a cinema house to exhibit, at every show, a certain minimum length of "approved films" was questioned. The restriction was held reasonable (see *R.M. Seshadri v. Distt. Magistrate Tanjore*<sup>1</sup>). *Union of India v. Motion Picture Assn.*<sup>2</sup> also related, inter alia, to the validity of licensing conditions. In another case, an order refusing permission to exhibit a film relating to the alleged obnoxious or unjust aspects of reservation policy was held violative of freedom of expression under Article 19(1)(a) (*S. Rangarajan v. P. Jagjivan Ram*<sup>3</sup>). Cases of surveillance by police came up for consideration in *Malak Singh v. State of P&H*<sup>4</sup>. Cases of orders relating to movement of goods came up in *Bishambhar Dayal Chandra Mohan v. State of U.P.*<sup>5</sup> There are hundreds of such cases dealt with by our courts. In all these matters, the proportionality of administrative action affecting the freedoms under Article 19(1) or Article 21 has been tested by the courts as a primary reviewing authority and not on the basis of *Wednesbury* principles. It may be that the courts did not call this proportionality but it really was.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on *Wednesbury* principles applies.

*Proportionality and punishments in service law*

69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

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<sup>1</sup> AIR 1954 SC 747 : (1955) 1 SCR 686.

<sup>2</sup> (1999) 6 SCC 150.

<sup>3</sup> (1989) 2 SCC 574.

<sup>4</sup> (1981) 1 SCC 420.

<sup>5</sup> (1982) 1 SCC 39 : 1982 SCC (Cri) 53.

16

70. In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India*<sup>6</sup> this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India*<sup>7</sup> this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in *Ganayutham*<sup>2</sup>.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

14. In light of the above arguments made learned counsel for the petitioner seeks the following relief from this Court:

- i. a writ, order or direction be passed in the nature of Certiorari quashing the notice dated 11.09.2007 and 21.03.2006, issued by the respondent.
- ii. a writ, order or direction be passed in the nature of Mandamus directing the respondent to complete the inquiry within a reasonable time period.
- iii. a writ, order or direction be passed in the nature

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<sup>6</sup> (1987) 4 SCC 611 : 1988 SCC (L&S) 1.

<sup>7</sup> (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44.

17

of Mandamus directing the respondent to not obstruct or interfere in the business dealings of the petitioner including those with the Central/State Governments.

15. Per contra, the respondent submits that this writ petition is an abuse of the process of the Court and nothing but a mala fide exercise on the part of the petitioner, with a view to stall and delay the domestic proceedings pending against the petitioner. Learned counsel for the respondent submits that it is settled law that the High Court under Article 226 of the Constitution should not exercise its jurisdiction and entertain a petition against a simple show cause notice, unless it is satisfied that the show cause notice is non-est in the eyes of the law for absolute want of jurisdiction of the authority to even investigate into the facts. The counsel for the respondent argues that calling upon the petitioner for hearing, by no stretch of imagination, can be said to be an action for inviting interference by this Court under Article 226 of the Constitution. Learned counsel for the respondent has relied upon the case of **Special Director and another V. Mohd. Ghulam Ghouse and Another**, reported at (2004) 3 SCC 440, to support his argument. The relevant portion of which is reproduced hereunder:

**"5.** ..... Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained

18

for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. ...."

Reliance has also been placed by the respondent on the case of **Union of India and Another V. Kunisetty Satyanarayana**, reported at (2006) 12 SCC 28 and which upheld that:

**"13.** It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh*<sup>8</sup>, *Special Director v. Mohd. Ghulam Ghouse*<sup>9</sup>, *Ulagappa v. Divisional Commr., Mysore*<sup>10</sup>, *State of U.P. v. Brahm Datt Sharma*<sup>11</sup>, etc.

**14.** The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

<sup>8</sup> (1996) 1 SCC 327 : JT (1995) 8 SC 331.

<sup>9</sup> (2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467.

<sup>10</sup> (2001) 10 SCC 639.

<sup>11</sup> (1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943.

**15.** Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

**16.** No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Another case relied upon by the learned counsel for the respondent is ***State of U.P. and Another V. Anil Kumar Ramesh Ghandra Glass Works and Another***, reported at (2005) 11 SCC 451, wherein the Supreme Court observed:-

"6. In our view, the High Court proceeded on an incorrect basis. Hence, the decision cannot stand. In any event, this Court had repeatedly held that Article 226 should not be permitted to be invoked in order to challenge show-cause notices unless accepting the fact in the show-cause notices to be correct, either no offence is disclosed or the show-cause notices are ex facie without jurisdiction. That could not be said as far as the eight show-cause notices in question are concerned. The High Court, therefore, should not have interfered and should have left the respondents to pursue their remedy by way of an appeal under Section 9 of the Act from the order of assessment which, according to the High Court, had admittedly been passed before the writ petition had been filed by the respondent."

16. Learned counsel for the respondent further argues that the petitioner having responded to the show cause notice and now after two and a half years of the issue of the show cause notice, and especially, after one and a half years of the order of suspension, cannot now question the same in light of the *prima facie* findings against it.

17. Learned counsel for the respondent submits that the

20

petitioner is trying to mislead this Court in so far as the status of the petition bearing number 23718/2005 is concerned. The counsel for the respondent argues that the statement of the petitioner that the petition was withdrawn with an assurance, is false. Rather the truth is that the petitioner very clandestinely had sought to obtain certain orders from the Court without impleading the respondent as a party and when the Court directed the petitioner to implead the respondent as a party then the petitioner withdrew the petition.

18. The respondent further submits that the contract awarded to the petitioner by Hindustan Latex Limited (a public sector undertaking) was due to a misunderstanding as the latter was unaware of the illegal acts of the petitioner. As soon as they came to know the true facts, they rightly cancelled the notification of the award of the contract.
19. Learned counsel for the respondent contends that the order '*suspending any business with the petitioner pending full enquiry*' dated 21.03.2006, was passed after thoughtful consideration of the matter and was a reasoned order. The said order was passed keeping in mind the interest of the public and further to safeguard the lives of the citizens of this country, especially, children for whose betterment the medicines were sought from suppliers like the petitioners. The counsel further submits that the petitioner is *prima facie* guilty of supplying sub-standard drugs, and for which they

21

are being prosecuted in different Courts. Learned counsel for the respondent submits that the notice dated 11.09.2007 under challenge was issued pursuant to the order dated 21.03.2006 and the material subsequently acquired by the respondent including the Report of the World Bank and further in view of the fact that prosecution against the petitioner is pending for supply of sub-standard drugs. Learned counsel has argued that the averment of the petitioner that they have been cleared of all allegations by the World Bank is sham and devoid of any merit. Learned counsel for the respondent has drawn the attention of this Court towards Annexure P-17 and which contains the order of the World Bank. Learned counsel submits that a simple reading of the order passed by the World Bank would enable this Court to readily come to the conclusion that the petitioner has not been cleared by the World Bank from any further business for a certain time period. Learned counsel submits that in so far as the petitioner's argument with respect to non-supply of documents is concerned, the petitioner has been participating in all the proceedings pending against them and has all the necessary documents and, thus, the question of depriving them of any documents does not arise. This argument of the petitioner is nothing but a lame excuse to somehow delay the proceedings. Herein the learned counsel for the respondent has relied upon in the case of **Grosos Pharmaceuticals (P) Ltd. and Another**

99

**V. State of U.P. and Others**, reported at (2002) 8 SCC 604,

wherein it was held that:

“2. Learned counsel appearing for the appellant urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show-cause notice were based along with the show-cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State Government and the said relationship is not governed by any statutory rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show-cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based, was not the requirement of the principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show-cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and it did reply to the show-cause which was duly considered by the State Government.”

20. Learned counsel for the respondent submits that the impugned notice dated 11.09.2007 was passed pursuant to the detailed notice dated 21.03.2006 suspending business with the petitioner pending full inquiry, and after taking into consideration the reply of the petitioner to the detailed show cause notice dated 05.08.2005 and thus no additional ground or reason was required to be disclosed in the impugned notice dated 11.09.2007.

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21. Learned counsel for the respondent further submits that the petitioner has made self-contradictory statements in view of the fact that on the one hand the petitioner is arguing that no action is being taken against the petitioner; and, on the other hand when a hearing is sought to be given to them by the respondent, then in order to stall and delay the cause of justice they approached the Court and challenge the proceedings on false and bogus grounds. Learned counsel also submits that the argument of the petitioner that it has always been the lowest bidder is false, baseless and a figment of imagination.
22. Learned counsel for the respondent argues that the 'suspension of business' order dated 21.03.2006 is a detailed and reasoned order and the contents whereof have not been refuted by the petitioner. Counsel for the respondent argues that the petitioner is trying to pre-judge the outcome of the hearing which was scheduled to be held on 23.10.2007. Learned counsel submits that the present petition is not maintainable and deserves to be outrightly rejected.
23. However, learned counsel for the respondent submits that the respondent is willing to afford a personal hearing to the petitioner and that the notice dated 11.09.2007, issued by the respondent to the petitioner be treated as a show cause notice.
24. I have heard learned counsel for both the parties and gone through the material on record. In the case of **Major Jai**



**Gopal Srivastava (Retd.) V. Govt of NCT of Delhi & Ors.**

WP(C)No.2545/2008 this Court has held:

"It is trite law that natural justice is a procedural requirement of fairness before arriving at any decision. It is the duty of the authority who is to decide the matter that it must act in a fair and just manner to arrive at a decision. This can only be done after granting hearing to the party and an opportunity to state his case. Doctrine of natural justice has been extended to Statutory Authorities Tribunals exercising quasi judicial function and even to Administrative Authorities which determine the Civil Rights of obligations. **In the case of Canara Bank & Ors. Vs. Debasis Das and Ors.** (2003) 4 SCC 557, the law relating to natural justice has been discussed in detail. It has been held as under:-

**"13.** Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

**14.** The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

**15.** The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving

25

civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. ...."

25. Furthermore, in the case of **Siemens Limited V. State of Maharashtra and Others**, reported at (2006) 12 SCC 33, the Apex Court observed:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of U.P. v. Brahm Datt Sharma*<sup>12</sup>, *Special Director v. Mohd. Ghulam Ghouse*<sup>13</sup> and *Union of India v. Kunisetty Satyanarayana*<sup>14</sup>, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See *K.I. Shephard v. Union of India*<sup>15</sup>.) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in *V.C., Banaras Hindu University v. Shrikant*<sup>16</sup>, stating: (SCC p. 60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the

<sup>12</sup> (1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943.

<sup>13</sup> 2 (2004) 3 SCC 440 : 2004 SCC (Cri) 826.

<sup>14</sup> 3 (2006) 12 SCC 28 : (2006) 12 Scale 262.

<sup>15</sup> (1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686.

<sup>16</sup> (2006) 11 SCC 42 : (2006) 6 Scale 66.

96

respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In *K.I. Shephard v. Union of India*<sup>4</sup> this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "

(See also *Shekhar Ghosh v. Union of India*<sup>17</sup> and *Rajesh Kumar v. D.C.I.T.*<sup>18</sup>)

**11.** A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable.

26. In this case, the respondent had issued a detailed show cause notice dated 05.08.2005 with respect to certain allegations of irregularities against the petitioner and to which the petitioner had replied vide communication dated 18.08.2005 and 27.08.2005. Thereafter the respondent had vide communication dated 21.03.2006 suspended further business dealings with the petitioner pending full enquiry into the allegations. Thereafter the respondent sent a copy of the letter dated 03.07.2007 to the petitioner and which read:

*"..... The Ministry has also suspended business with M/s Nestor Pharmaceuticals Ltd. vide letter No.N.23011/12/2005-Supply dated 21.03.206 until further orders.*

*It is requested that necessary action may be taken to ensure that fill further decision, no procurement of Health Sector Goods is made*

<sup>17</sup> (2007) 1 SCC 331 : (2006) 11 Scale 363.

<sup>18</sup> (2007) 2 SCC 181 : (2006) 11 Scale 409.

27

from the above two firms by Your State on behalf of Ministry of Health and Family Welfare.

Sd/-  
Director

To:

All Health Secretaries of States."

27. Thereafter the respondent sent yet another letter dated 11.07.2007 to the petitioner and which read:

*"Consequent to this Ministry's communication of even number dated 3<sup>rd</sup> July 07 whereby Ministry of Health and Family Welfare had suspended business with M/s Nestor Pharmaceuticals Ltd. vide letter No.23011/12/2005-Supply dated 21.03.2006 until further orders because of evidence of certain irregularities in supply of Health Sector Goods to the Ministry.*

*2. The administrative division of this Ministry has proposed a debarment for five years. You may kindly be present for making any submission with respect to the proposed debarment on 24<sup>th</sup> September, 2007, at 3 p.m. in the chamber of Shri Debasish Panda, Joint Secretary & CVO (Room No.146 'A' Wing, Nirman Bhawan, New Delhi)"*

28. I find force in the submission of learned counsel for the petitioner that the communication dated 11.09.2007 presupposes the petitioner to be guilty and the petitioner has been called upon to make submission with respect to the proposed debarment for a period of five years. A bare reading of the notice dated 11.09.2007 shows that the respondent had already found the petitioner to be guilty and also proposed the quantum of punishment.
29. Keeping in view the stand taken by learned counsel for the respondent before this Court that the respondent shall afford



a personal hearing to the petitioner and that the notice dated 11.09.2007 issued by the respondent to the petitioner be treated as a show cause notice, no further orders are required to be passed in this petition. The respondent is directed to give a personal hearing to the petitioner. The respondent shall fix the date and time and a notice be also sent to the petitioner at the address given in the writ petition. The respondent will hear the petitioner and thereafter pass a reasoned order as expeditiously as possible.

30. With these directions present petition stands disposed of.

April 13<sup>th</sup>, 2009  
'msr'



G.S.SISTANI  
( JUDGE )