

WP(C) 323/2021

...Petitioner(s)/Appellant(s).

Vs.

...Respondent(s).

2. Estate Officer/Chief Medical Officer, Pampore.
3. Drug Controller, DFCO Srinagar.
4. Licensing Authority, Assistant Drug Controller, Pulwama Shopian.
5. Drug Inspector Pampore.
6. Block Medical Officer, Pampore.

Through: Mr. Hakeem Aman Ali, Dy. AG
Respondent No.4, Ms. Humaira Yousuf Shawl, Assistant Drugs
Controller, Pulwama, present in person

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

10.04.2026

(Oral)

1. By way of the present petition, the petitioner has challenged Order No. ADC/DFCO/PUL-SPN/863-867 dated 10.12.2020, issued by respondent No. 4, whereby the Retail Drug Sale Licenses of the petitioner, granted in Form 20 and 21 vide Nos. AR/2480 and AR/2481, in favour of the firm “M/S John Medical Hall, Kadalbal, Pampore”, have been cancelled.
2. The grievance of the petitioner is that the impugned order has been passed in violation of the principles of natural justice, inasmuch as no show cause notice was served upon him prior to the cancellation of his licenses. It is stated that

the cancellation of the license has been effected on the ground of non-payment of renewal/retention fee under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder. However, the petitioner has duly paid the requisite fee from time to time and that the license remains valid up to the year 2024.

3. It is stated that, as per the applicable rules, a license to sell drugs remains valid for a period of five years from the date of renewal. In support of this contention, the petitioner has placed on record renewal receipts, the latest being dated 10.07.2019, valid for a period of five years. Therefore, the ground taken in the impugned order is stated to be factually incorrect and unsustainable in law.
4. It is also stated that although the impugned order refers to a show cause notice dated 07.12.2020, the same was never served upon the petitioner. It is urged that the respondents proceeded to pass the impugned order without affording any opportunity of being heard, thereby rendering the order liable to be set aside.
5. *Per contra*, the respondents have filed the reply, contending that the impugned order has been passed by the competent authority strictly in accordance with the provisions of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder, after following due procedure.
6. It is further submitted that the petitioner was operating the drug sale business illegally and without valid authorization. It is also stated that a criminal complaint has been lodged by the concerned Drug Inspector, which is pending adjudication before a competent court.

7. Additionally, it is alleged that the petitioner was running the drug sale shop within the Sub-District Hospital Pampore on a proxy license issued in favour of another entity, which has already been cancelled. It is further contended that the license had been shifted without obtaining requisite permission from the competent authority, in violation of the applicable rules.
8. Heard learned counsel for the parties and perused the material available on record.
9. The record reveals that this Court, vide order dated 25.02.2025, granted interim relief in favour of the petitioner and directed that the impugned order shall remain in abeyance, considering that the petitioner is running the business of sale of retail drugs for several decades and that abrupt stoppage thereof would cause undue hardship.
10. Subsequently, the respondents were directed to produce the relevant record. Upon perusal of the record so produced, this Court, vide order dated 23.02.2026, observed that there was no material on record to demonstrate that the show cause notice had been served upon the petitioner.
11. Learned counsel for the respondents fairly conceded that although a show cause notice forms part of the record, there is no proof of its service upon the petitioner, as no acknowledgment is available on the record.
12. In view of the aforesaid admission, it stands established that the petitioner was not served with the show cause notice prior to the passing of the impugned order, thereby violating rule 159 of The Drugs and Cosmetics Rules, 1945, which provides that before cancellation or suspension of licences the person aggrieved should be given an opportunity to show cause. For the facility of

reference rule 159 of The Drugs and Cosmetics Rules, 1940 is reproduced as under:

“Cancellation and suspension of licences— (1) The Licensing Authority may, after giving an opportunity to show cause within a period which shall not be less than fifteen days from the date of receipt of such notice, why such an order should not be passed, by an order in writing stating the reasons therefor, cancel a licence issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the drugs to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the licence or with any provisions of the Act and the rules made thereunder.

(2) A licensee whose licence has been suspended or cancelled may appeal to the State Government within a period of three months from the date of receipt of the order which shall, after considering the appeal, decide the same.”

13. Besides the aforesaid rule, it is otherwise also a settled principle of law that any order having civil consequences must be preceded by compliance with the principles of natural justice, particularly the rule of *audi alteram partem*, which mandates that no person shall be condemned unheard. The principles of natural justice have been recognised and followed since times immemorial. In this regard, the legal position has been firmly settled by the Constitution Bench of the Hon’ble Supreme Court in **A.K. Kraipak v. Union of India reported as (1969) 2 SCC 262**, wherein it was unequivocally held that no decision should be taken against a party without affording them a reasonable opportunity of being heard. The relevant extract from the judgment is reproduced as follows:

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was

thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry....”

14. Further, in another landmark judgment, **Maneka Gandhi v. Union of India reported as 1978(1) SCC 248**, a seven-Judge Bench of the Hon’ble Supreme Court held that any order passed in violation of the rule of natural justice embodied in the maxim *audi alteram partem* is null and void.

15. It is also well established that the principles of natural justice apply even in the absence of explicit statutory incorporation. The Hon’ble Supreme Court reiterated this position in **Canara Bank v. V.K. Awasthy 2005(6) SCC 321**, wherein at paragraph 14, it observed as follows:

“ Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old

distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

16. In the present case, the statute itself provides for the show cause notice and despite such a provision, no show notice was issued to the petitioner. Failure to serve the show cause notice has resulted in denial of an opportunity of hearing to the petitioner, thereby vitiating the impugned order.

17. Furthermore, it is a well-settled principle of law that where a statute prescribes that a particular act must be done in a specific manner, it must be carried out strictly in that manner and not otherwise. In the present context, the Drugs and Cosmetics Rules, 1945 mandatorily require the issuance of a show-cause notice. Therefore, compliance with this requirement is not optional but obligatory. Failure to adhere to the prescribed procedure renders the action legally unsustainable. The Supreme Court, in a catena of judgments, has consistently reaffirmed this position, holding that statutory procedures must be followed in their entirety.

18. Hon'ble Supreme Court in case titled **Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266** held as under:

"It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner"

19. However, learned counsel for the respondents submits, on instructions, that the respondents are willing to issue a fresh show cause notice to the petitioner and proceed in accordance with law after affording him an opportunity of being heard.

20. In view of the above, and considering the stand taken by learned counsel for the respondents, this Court deems it appropriate to dispose of the present petition with the following directions:

- (i) The respondents shall issue a fresh show cause notice to the petitioner within a period of two weeks from today.
- (ii) The said notice shall be duly served upon the petitioner against proper acknowledgment.
- (iii) The petitioner shall file his reply within one week from the date of receipt of the notice.
- (iv) Thereafter, the respondents shall consider the matter and pass a reasoned order strictly in accordance with the provisions of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder within a period of two weeks.
- (v) The petitioner shall be afforded a reasonable opportunity of being heard before passing the final order.
- (vi) Till such time the final decision is taken, the direction passed in order dated 25.02.2021 shall continue to remain in operation. However, the continuance of the same shall be subject to the outcome of the decision to be taken by the respondents.
- (vii) In case any adverse decision is passed, the petitioner shall be at liberty to avail appropriate remedy under law.

21. **Disposed of** in terms of the above.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
10-04-2026
Mubashir

- i. Whether the order is speaking: Yes/No
- ii. Whether the order is reportable: Yes/No