

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2234 of 2014**

Mohd.Kasim Ansari S/o Suleman Ansari Aged About 37 Years R/o
Khongapani Colliery Tah. Manendragarh Ps. Jhagrakhand Civil & Rev.
Dist. Korla Cg

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary Department Of Health And Family Welfare Secretariat Mahandi Bhawan New Raipur Ps. Rakhi Po Rakhi Dist. Raipur Cg
2. The Collector Korla Cum Chairman Indian Redcross Society Dist. Branch Baikunthpur Civil And Rev. Dist. Korla Cg
3. Chief Medical & Health Officer District Korla Cum Secretary Indian Redcross Society Dist. Branch Baikunthpur Civil & Rev. Dist. Korla Cg
4. Block Medical Officer Community Health Centre Manendragarh Civil & Rev. Dist. Koriya Cg
5. Sub Divisional Officer Manendragarh Civil And Rev. Dist. Korla Cg
6. Controller Food And Drug Administration Cg 4th Flr, Block-1, Indrawati Bhawan Naya Raipur Dist. Raipur Cg
7. Drug Inspector Food And Drug Administration Dist. Surguja Cg

---- **Respondents**

For Petitioner	:	Shri Adil Minhaz, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****10/03/2016**

Heard.

2. This petition is directed against order dated 03-11-2014, by which, agreement with the petitioner for running medical shop of Redcross Society has

been cancelled and the petitioner has been blacklisted by ordering that the petitioner shall not be entitled to participate in any tender process for allotment of medical shop run by Indian Redcross Society.

3. Case of the petitioner has chequered history. The petitioner was allotted medical shop of Redcross Society and agreement was entered into between the petitioner and Indian Redcross Society through Chief Medical & Health Officer, District Korea. Earlier proceedings were drawn and the Sub Divisional Officer sealed the shop of the petitioner on certain allegations which was subjected to challenge by filing writ petition WPC No.161/2014. The said writ petition was allowed by this Court vide order dated 06-02-2014 holding that even if there was any allegation, it was not competent for the SDO to take the action. This Court kept open for the Collector to accept or not to accept the recommendation, but it was observed that before taking any final decision or passing any order, the petitioner shall be afforded opportunity of hearing by the Collector.

4. Another inspection was took place on 17-02-2014 by the Drug Controller. The Inspection Report in Annexure P-8 was prepared and certain discrepancies were found. The Drug Controller gave a show cause notice to the petitioner on 04-03-2014 which was replied by the petitioner vide his reply dated 02-04-2014. However, the Drug Controller did not proceed further in the matter.

5. While the matter stood thus, the impugned order has been passed by the Chief Medical & Health Officer in his capacity as Secretary of Indian Redcross Society, District Korea. It is this order, which is under challenge in this petition.

6. Contention of learned counsel for the petitioner is that earlier the Court had granted liberty to the Collector to take decision after affording opportunity of

hearing to the petitioner. However, inspection report was made a basis to issue show cause notice by the Drug Controller. The petitioner submitted his reply to the Drug Controller but he did not pass any order against the petitioner. The Chief Medical & Health Officer, Korea has stated in the impugned order that he has passed the order as directed by the Collector, but the Collector did not issue show cause notice nor afforded opportunity of hearing to the petitioner. It is also submitted that the nature of discrepancies or irregularities, which were found during inspection, were not so grave as to warrant cancellation of allotment.

7. On the other hand, learned State counsel submits that the drug license of the petitioner has come to an end today, i.e. on 10-03-2016. Unless the drug license is extended for a further period, no relief can be claimed to the petitioner and he cannot be allowed to run the shop, even if there is allotment in his favour. It is next contended that the period of agreement has already expired long back, therefore, in the absence of there being any material on record, no relief can be granted to the petitioner to run the shop. Next submission of learned State counsel is that though, the Drug Controller had given a notice to the petitioner, as the impugned order shows that the decision was taken by the Collector, it has to be presumed that the decision was taken after examining the entire material including show cause notice, reply of the petitioner and inspection report in respect of petitioner's case by the Collector.

8. Curiously enough, neither the Chief Medical & Health Officer nor the Collector gave show cause notice to the petitioner nor afforded him any opportunity of hearing to the petitioner.

9. There is yet another reason as to why the impugned order becomes

unsustainable in law. In the earlier round of litigation, this Court had granted liberty to the Collector to take action after affording opportunity of hearing to the petitioner. However, there is no material on record by the respondents to show that show cause notice was given to the petitioner by the Collector, petitioner's reply was considered by the Collector and for certain reasons, decision was taken on files and note sheets by the Collector that the agreement is required to be cancelled. The impugned order refers that the order is being passed as directed by the Collector. It clearly means that the Chief Medical & Health Officer did not apply his mind. The material, on the basis of which, the respondent could satisfy this Court that the Collector has applied its mind, after affording opportunity of hearing to the petitioner, has not been produced.

10. The resultant position, therefore, is that the authority, who had given show cause notice to the petitioner and obtained his reply, has not passed any order, but the order has been passed by the authority, who did not give show cause notice to the petitioner, on the direction of superior authority.

11. Viewed from any angle, the impugned order, suffering from procedural impropriety, cannot be sustained.

12. In the absence of there being any material on record to show that the agreement of the petitioner is still subsisting, no direction can be issued to handover the medical shop to the petitioner. However, blacklisting order against the petitioner is clearly found to be illegal, and therefore, set aside. Subject to the renewal of drug license in petitioner's favour, it would be open for him to participate in the future tender proceedings for allotment of medical shop and the impugned order shall not come in the way. However, the petitioner would free to claim damages for the period, during which, his shop remained closed

during subsistence of the agreement because of the impugned order.

13. Accordingly, this petition is partly allowed.

Sd/-

Manindra Mohan Shrivastava

Judge