

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.42609 OF 2015

ORDER:

Heard.

This writ petition is directed against the impugned order passed by the respondent Corporation under Ex.P-8, dated 10-12-2015, whereunder the dealership agreement of the petitioner, dated 02-02-2005 is terminated from the date of service of the said letter to the petitioner. The said order is questioned in this writ petition primarily on the ground that the same is in violation of principles of natural justice inasmuch as the said order is based upon the report of the Committee, dated 16-04-2015 but neither the petitioner was given any opportunity before the Committee nor the report of the Committee referred to above was furnished to the petitioner.

On the said aspect, notice before admission was ordered on 31-12-2015 and now a counter affidavit is filed by the learned Standing Counsel appearing for the respondents.

A reading of the counter affidavit, however, discloses that the findings reached against the petitioner are clearly based upon the said report of the Committee, dated 16-04-2015, but the said report is not furnished to the petitioner.

It is also evident from the record that prior to the impugned termination order, a show-cause notice was issued to the petitioner on 26-06-2015. The petitioner gave a detailed reply thereto on 14-07-2015 and in paragraph '11' thereof he has specifically stated as follows:-

“It is once again reiterated that the Test Report, dated 27-02-2015 by the IOC., Charlapally Lab, it was clearly establishes that the samples drawn for MS meets the necessary test specifications. Therefore, the density is within the permissible limit. The physical stock not matching with the Daily Stock Register is only due to the lapse on the part of the newly appointed Manager and as far as the allegation of the stock variation beyond alleged permissible limits, the report of the committee, dated 16-04-2015 was not furnished to us. Therefore, the basis on which the committee has come to the conclusion that there is an unauthorized purchase to the tune of 2492 litres is arbitrary and violation of principles of natural justice as no opportunity was given to us to appraise the committee regarding the said alleged variation of the stock.”

The report of the committee, dated 16-04-2015 being the basis of the impugned order, non-furnishing of the said report to the petitioner, in my view, undoubtedly violates the principles of natural justice, as the material which is relied upon by the respondents is not furnished to the petitioner and no opportunity was given to him to make his submission with regard to the said material.

The counter affidavit filed by the respondents does not controvert the specific allegation of the petitioner nor there is any averment contrary. Therefore, the Committee, which considered the issue and submitted its report, dated 16-04-2015, ought to have furnished report to the petitioner particularly, when a show-cause notice, dated

26-06-2015 was issued to the petitioner, which specifically refers to conduct of study by the Committee and the report of the Committee, dated 16-04-2015 concluding that there is an unauthorized purchase of an extent of 2492 litres. Since the said finding in the report is relied upon by the respondents in the show-cause notice as well as in the impugned proceedings of termination, the petitioner ought to have been given a copy of the report alongwith an opportunity to substantiate his case against the findings in the said report and even

otherwise when specifically pointed out by the petitioner in the reply to the show-cause notice, still the impugned order is passed. Hence, in my view, the same is clearly violative of principles of natural justice and fair opportunity is denied to the petitioner while charging him with serious civil consequences.

In view of that, the impugned order is set aside. It shall be open to respondents 1 and 2 to comply with the principles of natural justice and then take further action in accordance with law, if they so desire.

Accordingly, the writ petition is allowed. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

VILAS V.AFZULPURKAR, J

22.02.2016

Prv

