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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09.12.2015

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Pronounced on: 15.01.2016

+ LPA 885/2015 & CM No.30048/2015

HARI OM GUPTA

....Appellant

Through: Mr.Gurmit Singh Hans alongwith
Mr.Vishal Soni, Advs.

Versus

GOVT.OF NCT OF DELHI

...Respondent

Through: Mr.Peeyoosh Kalra, ASC for
GNCTD

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal seeks to impugn the order dated 5.11.2015 passed by the learned Single Judge dismissing the writ petition filed by the appellant. The appellant filed the Writ Petition seeking the following reliefs:-

“It is therefore most respectfully prayed before this Hon’ble Court that this Hon’ble Court may be pleased to set aside the impugned order dated 21.10.2015 passed by the Lt.Governor, Delhi, and in consequence to that allow the appeal of the petitioner and thereby set aside the order dated 07.09.2015 passed by Sh.K.C.Aggarwal, Licensing Authority, Drugs Control Department, Govt. of NCT of Delhi, and record be summoned and order be passed in favour of the petitioner firm and against the respondent.”

2. The brief facts which led to filing of the Writ Petition are that the

appellant firm was holding a license to sell drugs etc. under the Drug and Cosmetics Rules, 1945, which had been granted on 2.4.2004 valid upto 1.4.2019. An inspection was carried out by the Drug Inspector on 13.5.2015 of the shop of the appellant. Certain discrepancies/ contraventions of the Drug and Cosmetics Rules, 1945 were stated to have been detected. A Memorandum dated 15.5.2015 was issued to the appellant. The appellant filed a formal reply on 27.05.2015.

3. It is the contention of the appellant that without holding any further enquiry and without giving any opportunity to the appellant, the licensing authority, Drug Control Department, Govt. of NCT of Delhi passed an order dated 7.9.2015 cancelling the license of the appellant firm permanently. The appellant impugned the said order under Rule 66(2) of the said Drugs and Cosmetics Rules, 1945 before the Lieutenant Governor. The Lieutenant Governor noted that the appellant firm had been provided enough opportunity by issuing a Show Cause Notice and a personal hearing. It further noted that the license of a medical store is given in order to make available drugs/medicines to the public in the neighbourhood and not for any purpose which affects the health of the public adversely. Hence, the appeal was dismissed vide order dated 21.10.2015.

4. Impugning the said order of the Lieutenant Governor dated 21.10.2015 the appellant filed the present Writ Petition. The learned Single Judge dismissed the same on 5.11.2015. The impugned order notes that in the hearing before the learned Single Judge the appellant did not controvert the fact that certain documents were not produced/shown at the time of inspection. It also noted that the appellant had admitted that

Register of Schedule H-1 Drugs was not being maintained and the same was an inadvertent/innocent mistake. The order also notes that the learned counsel for the respondent has placed on record photocopies of complaints of Residents Welfare Association (RWA) of the Chemist in the locality selling Schedule H-1 Drugs which are required to be sold only on prescription of a registered medical practitioner, without any prescription, leading to the residents of the locality forming a habit. The order further notes the contention of the respondent that the premises of the appellant was found stocked mostly with the said drugs, the proportion of the other drugs being very small. However, it was noted that these facts are not recorded in the inspection report or in the Show Cause Notice. Based on this, the learned Single Judge dismissed the Writ Petition as being without merits.

5. We have heard learned counsel for the parties and have perused the record.

6. We may first have a look at the Memorandum or the Show Cause dated 15.5.2015 that was issued to the appellant. The Memorandum notes the discrepancies observed in the inspection dated 13.0.2015 as follows:-

- “1. Original Licenses were not found displayed.
2. Record for Schedule H-1 drugs were not found maintained.
3. On demand, the firm failed to produce records of purchase and sale of drugs including below noted 10 drugs which were stocked for Sale/distribution.

Sl. No.	Item	B.No.	Qty.stocked
i.	Corex Cough Syrup	520-13320K	13x100 ml
ii.	Corex Cough Syrup	520-13325K	5x100 ml
iii.	Corex Cough Syrup	520-13003K	5x50ml

iv.	Corex Cough Syrup	420-13125K	3x50ml
v.	Phensedyl Cough Linetus	PHA5001	1x50ml
vi.	Phensydl Cough Syrup	PHB5171	8x50ml
vii.	Inj.Calmpose	9021970	7
viii.	Inj.Avil	2314101	3x10ml
ix.	Inj.Avil	2314128	6x10ml
x.	Avil Tabs	A150011	40x15 tabs

4. The firm was found to have purchased below noted drugs from M/s. Delhi Distributor, Delhi.

Sl. No.	Item	Bill No.and Qty.purchased	Qty.stocked	Qty.stocked
	Spasmoproxyvon	JQ10204	SI-3022 dated 7/5/15	1x8

No sales invoices/records were found issued by the firm for the above said sale. Inspection book on Form no.35 was not found maintained.”

7. The Memorandum also noted that the provisions of Rule 65(3) (4) and (16) of the Rules and conditions of the license have been contravened. The Memorandum also gives an opportunity of 10 days’ to the appellant to show cause as to why the license should not be suspended/cancelled under Rule 66 of the Rules.

8. A perusal of the impugned order dated 07.09.2015 cancelling the license of the appellant shows that various reasons/grounds are given as to why the impugned order has been passed. The first ground noted in the said order is that the appellant firm has admitted discrepancies mentioned in the notice and had assured not to repeat such lapses in future. The other

grounds mentioned for passing the order of closure as stated in the said order reads as follows:-

“It is pertinent to mention here that the firm was warned vide memo dated 3/11/2008 and firm licenses referred to above were previously suspended for a period of 2 days vide office order dated 30/1/12 for similar offences noted above. From the above I convinced that the firm has contravened the provision of Rule 65(3), 65(4), 65(16) of Drug and Cosmetics Rules 1945 and conditions of Licenses.

From the above Observations, I am of the considered opinion the firm is an habitual offender and Has been continuously in the sale of habit forming Drug which has been a great concern to the public life at large. The Department had also been receiving several complaints against the medical stores located in the locality and alleging the sale of such habit forming drugs by the medical stores.”

9. Regarding the first ground, i.e. that the firm has admitted about the discrepancies there is no such admission available on record. Possibly the reference is to the reply filed to the Memorandum dated 15.05.2015 which was filed on 27.5.2015 by the appellant. The reply which is a short submission states as follows:-

“With reference to your above said memo, I, Shri Niwas Gupta pharmacist cum person in-charge of the firm is hereby submitted the purchase record of all ten (10) Drugs noted in the memo and for sale record. I am unable to produce and feel sorry of that I assure you sir that such type of mistake will not be repeated in future.”

10. On a reading of the above reply it is apparent that the appellant has not admitted any violation of the statutory provisions. It puts on record certain purchase records and apologises for not having filed any

document. The manner in which it is drafted shows that the author was having difficulty in expressing himself in English language. The slightly vague language used cannot be the basis to conclude that the reply admits the discrepancies mentioned in the notice. This conclusion of the respondent is erroneous on the face of the record. This reply cannot be a basis to pass an order of cancellation of the license of the appellant firm.

11. We may now look at the other grounds stated in the impugned order dated 07.09.2015 to justify passing of an order cancelling the licence of the appellant. The grounds as stated are: a) that the firm was warned earlier on 03.11.2008 and the licence was suspended for a period of two days; b) that the firm is a habitual offender and has been affecting sale of habit forming Drugs which has been a great concern to public life at large and c) that several complaints in this regard have been received. None of these grounds are stated in the Memorandum/Show Cause Notice dated 15.05.2015 issued to the appellant pursuant to which the cancellation order was passed. The object of a Show Cause Notice is to apprise the party against whom action is proposed to be taken of the case that he has to meet. Introducing facts in the order to support the penalty imposed on the party without giving an opportunity to the concerned party to comment or respond to the said facts or imputations would clearly vitiate the entire process and would be contrary to the principles of natural justice.

12. Reference in this context may be had to the judgment of the Supreme Court in the case of *Canara Bank & Ors. v. Debasis Das & Ors.*, AIR 2003 SC 2041 (MANU/SC/0225/2003). The Court held as follows:

“17. 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 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 appraise the party determinatively 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 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. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vacate interrogate and adjudicate". In the calibrated case of *Cooper v. Wandsworth Board of Works* 1963 (143) ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou (sic) not eaten of the tree whereof I commanded thee that thou should not eat".

18. Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.”

13. Reference may also be had to the judgment of the Supreme Court

in the case of *Gorkha Security Services v. Govt. of NCT of Delhi*, (AIR 2014 SC 3371)/(MANU/SC/0657/2014). That was a case where the Supreme Court was dealing with the form and content of a Show Cause Notice before blacklisting of a firm. The court in para 19 held as follows:

“19. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.”

14. The impugned order dated 07.09.2015 cancelling the license of the appellant has been passed on various grounds/imputations. One of the grounds as stated above is erroneous on the face of the record. On the remaining grounds, which form the basis of the order of closure, no opportunity was given to the appellant to submit his reply. Show Cause Notice was bereft of such facts or imputations on the basis of which the order dated 07.09.2015 has been passed. The respondent was obliged to incorporate in the show cause notice all facts and imputations, on the basis of which it proposed to take action against the appellant. Failure to do so deprived the appellant of a valuable opportunity to present its side

of the facts/case. The order dated 07.09.2015 has been passed in violation of the principles of natural justice and is liable to be struck down.

15. We have now come to the order of the Lieutenant Governor passed in appeal dated 21.10.2015. The relevant portion of the order reads as follows:-

I have considered the submissions made by both the sides and have also gone through the case file. It is clearly evident from the averments of the respondent department that the appellant firm had been provided enough opportunity by issuing a show cause notice and also a personal hearing. The license for a medical store is given in order to make available the drugs/medicines to the public in their neighbourhood and not for the purpose which affects their health adversely. I therefore, find no ground to interfere with impugned order and the same is upheld. The appeal is accordingly rejected.”

16. A reading of the order shows that it notes in details the contentions of the learned counsel for the appellant. It however, does not deal with any of the submissions made by the learned counsel for the appellant. It fails to give any reason as to why the contentions are being rejected by the Appellate Authority. The order is passed merely relying upon the submissions made by the learned counsel for the respondent, which submissions or imputations were never put to the appellant for his comments /response in the Memorandum/ Show Cause Notice. The order is cryptic and cannot be called a reasoned order.

17. In the above context, reference may be had to the judgment of the Supreme Court in the case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers, (2010) 4 SCC 785* (MANU/SC/0258/2010) where in paragraph

13 and 14 the Supreme Court held as under:-

“13. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders. In the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. MANU/SC/0211/1976 : AIR 1976 SC 1785, the Supreme Court held as under:

6. ...If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....”

18. The appellate authority was exercising quasi judicial powers. It was obliged to give cogent and proper reasons for dismissing the appeal taking into account the submissions of the appellant. In our opinion, the said order has been passed contrary to the principles of natural justice. It also failed to notice the infirmities in the order cancelling the license of the appellant as noted above. The said order is also liable to be quashed.

19. In the light of the above, the orders impugned in the writ petition suffer from material illegality and are liable to be quashed. We hence quash the order dated 05.11.2015 passed by the learned Single Judge in W.P. (C) 10280/2015. We also quash the orders impugned in the Writ Petition, namely, order dated 7.9.2015 cancelling the license of the appellant and the appellate order dated 30.09.2015. However, this order would not in any manner prevent the respondent to ensure that the appellant is complying with various statutory provisions as per law.

20. The appeal is allowed accordingly.

(JAYANT NATH)
JUDGE

(CHIEF JUSTICE)

JANUARY 15, 2016

n/v