

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1467 of 2017**

Aasha Prathmik Sahkari Upbhokta Bhandar, Ambedkar Nagar Bilaspur Through Its Chairman Shabbir Hussain S/o Let. Abdul Gani, Aged About 57 Years, R/o Near Gowardhanbada Tala Para Bilaspur, District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Food, Civil Supplies And Consumer Protection, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (Chhattisgarh).
2. The Director, Directorate Of Food, Civil Supplies And Consumer Protection, Block No. 2, 3rd Floor Indrawati Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
3. The Collector (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).
4. The Controller (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).

---- Respondents

And

WPC No. 1494 of 2017

Adarsh Prathmik Sahakari Upbhokta Bhandar Lajpatrai Nagar Ward No. 23, District Bilaspur Through Its President Smt. Pushpa Shukla W/o Shri Rakesh Shukla, Aged About 50 Years, R/o Khaparganj, Lajpatrai Nagar Ward No. 23 District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Food Civil Supplies And Consumer Protection, Mahanadi Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
2. The Director, Directorate Of Food Civil Supplies And Consumer Protection, 3rd Floor, Indrawati Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
3. The Collector (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).
4. The Controller (Food), Near Collectorate Office, Bilaspur District Bilaspur (Chhattisgarh).

---- Respondents

And

WPC No. 1517 of 2017

Prathmik Sahkari Upbhokta Bhandar Talapara (Now Krantikumar Bhartiyanagar) Bilaspur Through Its Chairman Noordad Khan S/o Haji Ashraf Khan, Aged About 64 Years, R/o Tala Para, Kumhar Para Bilaspur, District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Food Civil Supplies And Consumer Protection, Mahanadi Bhawan, New

Mantralaya, District Raipur (Chhattisgarh).

2. The Director, Directorate Of Food Civil Supplies And Consumer Protection, 3rd Floor, Indrawati Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
3. The Collector (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).
4. The Controller (Food), Near Collectorate Office, Bilaspur District Bilaspur (Chhattisgarh).

---- Respondents

And

WPC No. 1616 of 2017

Jaibhawani Prathmik Sahkari Upbhokta Bhandar Maryadit Ramdas Nagar, Ward No. 33 New 37 Bilaspur Through Its Manager Badal Pasi S/o Late Shambhunath Pasi, Aged About 19 Years, R/o Tikrapara Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Food Civil Supplies And Consumer Protection, Mahanadi Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
2. The Director, Directorate Of Food Civil Supplies And Consumer Protection, 3rd Floor, Indrawati Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
3. The Collector (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).
4. The Controller (Food), Near Collectorate Office, Bilaspur District Bilaspur (Chhattisgarh)

---- Respondents

And

WPC No. 1679 of 2017

Jagrook Prathmik Sahkari Upbhokta Bhandar, Jabda Para Bilaspur Through Its Chairman Mahesh Dubey S/o Late Lalmani, Dubey Aged About 48 Years, R/o Subhash Nagar, Gode Para Bilaspur, District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Food Civil Supplies And Consumer Protection, Mahanadi Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
2. The Director, Directorate Of Food Civil Supplies And Consumer Protection, 3rd Floor, Indrawati Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
3. The Collector (Food), Collectorate Office, Bilaspur, District Bilaspur (Chhattisgarh).
4. The Controller (Food), Near Collectorate Office, Bilaspur District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioners	: Ms Sharmila Shinghai, Mr.Prakash Tiwari and Mr.Suresh Kumar Verma, Advocate
For Respondents/State	: Mr.Arun Sao, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/7/2017

1. Since common question of law and facts are involved in these batch of writ petitions, they are heard together and are being disposed of by this common order.
2. In these batch of writ petitions, the orders challenged in the respective petitions are the orders passed by the Collector Bilaspur directing merger/amalgamation of various ration shops into one ration shops mainly on the ground that before deciding as to which shop is to be merged, the individual petitioners who were holding licence and running ration shops, were not heard and as such violated Clause 16(3) of the of the Chhattisgarh Public Distribution System (Control) Order, 2016 (hereinafter called as 'Order, 2016'), therefore, the impugned orders are liable to be set aside.
3. Return has been filed opposing the writ petitions stating that decision was taken for better administration and management of ration shops where it was found number of consumers/ration card holders in particular ration shops were less than required number and decision was taken to merge them with other fair price shops.
4. Learned counsel for the petitioners would submit that the impugned orders passed by the Collector, which amount to cancellation of their Fair Price Shops granted in their favour, are in teeth of Clause 16(3) of the Order, 2016 as no opportunity of hearing was afforded to the

petitioners before cancelling their Fair Price Shops and no show-cause notice was issued to them for cancelling and merging their ration shops to other ration shops, therefore, the impugned orders are liable to be set aside. Therefore, the orders of learned Collector Bilaspur are arbitrary and in addition, it is violation of Clause 16 (3) of the Order, 2016.

5. On the other hand, Mr.Arun Sao, learned Deputy Advocate General with Mr.Dhiraj Wankhede, learned Government Advocate for the respondents/State, would support the impugned orders and submit that for better administration and management of the Fair Price Shops, decision has been taken strictly in accordance with the Order, 2016 and the writ petitions deserve to be dismissed.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
7. It is not in dispute that the petitioners are fair price shop keepers and running their fair price shops for a fairly long time and there is no complaint of any of the consumers. No proceeding has been initiated against their fair price shops for misconduct in the distribution of articles supplied to them.
8. Clause 16(3) of Control Order, 2016 came into force on 23.1.2017 repealing the Chhattisgarh Public Distribution System (Control) Order, 2004. Clause 16 (3) of Order, 2016 provides for cancellation of authority letter of Fair Price Shop which states as under:-

“16(3). Before cancellation of authority letter of Fair Price Shop or forfeiture of whole or part of security, Food Controller or Food Officer of the district or Sub-Divisional Officer of sub-division shall issue show cause notice to

Fair Price Shopkeeper and after giving an appropriate opportunity of being heard shall decide within a period of a month from issuance of show cause notice.”

9. A careful perusal of Clause 16(3) of Order, 2016 would show that before cancellation of authority letter of Fair Price Shop the competent authority is required to issue show-cause notice to the Fair Price Shopkeeper and after giving an appropriate opportunity of being heard the competent authority named herein shall decide the dispute within a period of one month from issuance of show-cause notice. Therefore, issuance of show-cause notice and thereafter decision has to be taken after giving appropriate opportunity of being heard to the Fair Price Shopkeeper.
10. The effect of the impugned order is that authority letter of the Fair Price Shop run by the petitioners would stand revoked and revocation of their Fair Price Shop would necessary involve civil consequence and therefore, in the considered opinion of this Court, the Collector Bilaspur ought to have followed the procedure prescribed in Clause 16(3) of Order, 2016 before cancelling or merging Fair Price Shops of the petitioners.
11. The law in this regard is no longer res-integra. Their Lordships of the Supreme Court in the matter of **Shrawan Kumar Jha and others Vs. State of Bihar and others**¹ have held that holders of appointment orders are entitled to opportunity of hearing before cancelling their appointments. Cancellation orders without complying with rules of natural justice is liable to be set aside. It was observed as under:-

¹ 1991 Supp (1) SCC 330

“3..... we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground.”

12. Their Lordships of the Supreme Court in the matter of D.K. Yadav Vs. J.M.A. Industries Ltd.² have held that order involving civil consequence must be in consonance with principles of natural justice. It was observed as under:-

“8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.*³ the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*,⁴ this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the

2 (1993) 3 SCC 259

3 (1978) 1 SCC 405

4 (1967) 2 SCR 625

evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In *State of West Bengal v. Anwar Ali Sarkar*⁵, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Art. 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi v. Union of India*⁶ another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Art, 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative. inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not

⁵ 1952 SCR 284
⁶ (1978) 1 SCC 248

to administrative enquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable.”

13. Similar is the proposition of law laid by the Supreme Court in the matter of **Nisha Devi Vs. State of Himachal Pradesh and others**⁷ in which Their Lordships have held that principle of audi alteram partem admits of no exception, and has to be adhered to in all circumstances. It was observed as under:-

“5 Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any decision which has serious implications and consequences to any person, such person must be heard in his defence. We find that the High Court did not notice the violation and infraction of this salutary principle of law. Accordingly, on this short ground, the impugned judgments and orders require to be set aside, and are so done.....”

14. Reverting back to the facts of the case, it is quite vivid that the petitioners are running Fair Price Shops for a fairly long time and there is no complaint against them and without following the

⁷ (2014) 16 SCC 392

procedure as envisaged in Clause 16(3) of Order, 2016, the authority letter to run the Fair Price Shop has been cancelled without issuing show-cause notice and without hearing to them which is in teeth of the provisions contained in Clause 16(3) of Order, 2016.

15. At this stage, Mr.Arun Sao would submit that the Collector has constituted a committee to look into the matter and on the recommendation of that Committee, decision has been taken, but the fact remains that the orders are in violation of Clause 16 (3) of Order, 2016 as neither show-cause notice was issued to the petitioners nor they were heard.

16. As a fall out and consequence of the aforesaid discussion, the orders passed by the Collector Bilaspur in the writ petitions cancelling their authority letter of Fair Price Shops and attaching it to other Fair Price Shops are hereby quashed. Matters are remitted to the Collector, Bilaspur, who in turn, shall issue them show-cause notice as per provisions contained in Clause 16(3) of Order, 2016 and thereafter depending upon the reply of the petitioners to take a decision as provided under Clause 16(3) of Order, 2016 and to pass reasoned and speaking orders as early as possible preferably within a period of three months from the date of receipt of certified copy of this order.

17. The writ petitions are allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-