

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP(C) No.1997 of 2017**

Marketing Co-Operative Society Maryadit Dhamdha, Registration No. 51, Dhamdha, District Durg (Chhattisgarh) Through Its Assistant Manager, Surendra Singh Rajpur S/o Late Bahadur Singh, Aged About 59 Years, Working At Marketing Co-Operative Society Maryadit, Dhamdha, District- Durg, 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, 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, Durg, District Durg, Chhattisgarh
4. Sub Divisional Officer (Revenue), Dhamdha, District Durg, Chhattisgarh
5. Gram Panchayat Pendraavan, Through Its Secretary Gram Panchayat Dhamdha, District Durg, Chhattisgarh
6. Gram Panchayat Agaar, Through Its Secretary Gram Panchayat Agaar, Janpad Panchayat Dhamdha, District Durg, Chhattisgarh

---- Respondents

For Petitioner	: Mr. Ashish Surana, Advocate
For State	: Mr. Dhiraj Wankhede, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**21/07/2017

1. Heard.
2. Admit.
3. Issue notice to the respondents.
4. Mr. Dhiraj Wankhede, Government Advocate accepts notice on behalf of the State/respondents.
5. With the consent of the parties, the matter is heard finally.

6. In this writ petition, the order challenged in the petition is the order passed by the respondent No.4 and approved by Collector Bilaspur, Durg cancellation of various ration shops mainly on the ground that before deciding as to which shop is to be cancelled, the petitioner who was holding licence and running ration shop, was not heard and as such violated Clause 16(3) of the Chhattisgarh Public Distribution System (Control) Order, 2016 (hereinafter called as 'Order, 2016'). Further order is passed under Chhattisgarh Public Distribution System (Control) Order 2004 which stands repealed w.e.f. 28.01.2017 and therefore, the impugned orders are liable to be set aside.
7. Learned counsel for the petitioner would submit that the impugned order passed by the Collector, which amount to cancellation of his Fair Price Shops granted in his favour, is in teeth of Clause 16(3) of the Order, 2016 as no opportunity of hearing was afforded to the petitioner before cancelling his Fair Price Shops and no show-cause notice was issued to him for cancelling, therefore, the impugned orders is liable to be set aside. The impugned order is passed under Control Order 2004 which is repealed on 28.01.2017.
8. On the other hand, Mr. Dhiraj Wankhede, learned Government Advocate for the respondents/State, would support the impugned order and submit that for better administration and management of the Fair Price Shop, decision has been taken strictly in accordance with the law and the writ petition deserve to be dismissed.
9. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

10. It is not in dispute that the petitioner is fair price shop keeper and running his fair price shop for a fairly long time and there is no complaint of any of the consumers. No proceeding has been initiated against his fair price shop for misconduct in the distribution of articles supplied to them.
11. 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.”
12. 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.
13. 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 his Fair Price Shop would necessary involve civil consequence and therefore, in the considered opinion of this Court, the Collector, Durg

ought to have followed the procedure prescribed in Clause 16(3) of Order, 2016 before cancelling or merging Fair Price Shops of the petitioner.

14. 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:-

“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.”

15. 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

1 1991 Supp (1) SCC 330

2 (1993) 3 SCC 259

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 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

3 (1978) 1 SCC 405

4 (1967) 2 SCR 625

5 1952 SCR 284

6 (1978) 1 SCC 248

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 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.”

16. 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:-

7 (2014) 16 SCC 392

“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.....”

17. Reverting back to the facts of the case, it is quite vivid that the petitioner is running Fair Price Shops for a fairly long time and there is no complaint against him and without following the 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 him which is in teeth of the provisions contained in Clause 16(3) of Order, 2016.
18. At this stage, Mr. Dhiraj Wankhede 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 petitioner nor he was heard.
19. As a fall out and consequence of the aforesaid discussion, the order passed by the respondent No.4 and approved by Collector Durg in the writ petition cancelling his authority letter of Fair Price Shops is hereby quashed. Matter is remitted to the Collector, Durg, who in turn, shall issue him show-cause notice as per provisions contained in Clause 16(3) of Order, 2016 and thereafter depending upon the reply of the petitioner 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.

20. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

L/-