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

Date of Decision: 15th September, 2017

+ W.P.(C) 8238/2017

RAGHAV PASWAN

..... Petitioner

Through: Mr. S.K. Singh & Ms. Renu Singh,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY AND ANR..... Respondents

Through: Mr. Sanjeev Sabharwal, Standing
Counsel for the DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.(ORAL)

1. The challenge in this writ petition is to the order dated 19.8.2017 passed by the Executive Engineer/WD-8, DDA, by which the permission granted to the petitioner to sell vegetable and fruits near Max Dry Cleaners, Plot No.1, Sector-6, MLU Market, Dwarka has been withdrawn.

2. Learned counsel for the petitioner submits that the order dated 19.8.2017 is bad in law, as the same has been passed without complying with the principles of natural justice. Learned counsel has also drawn the attention of the Court to a communication dated

8.2.2016 received by the petitioner, by which the then Executive Engineer had granted express permission to the petitioner to sell fresh vegetables and fruits under certificate issued by FSSAI Food Licensing & Registration system, provided there is no hindrance in the movement of traffic and the area in question is kept clear. Learned counsel submits that, in the absence of any show cause notice and in the absence of any hearing, the impugned order is liable to be quashed. Learned counsel has also brought to the attention of the Court that he had approached this Court by filing WP(C) No.5822/2017, wherein the grievance was raised against the Delhi Police who was not allowing the petitioner to vend despite the permission from the DDA. On 1.9.2017, the said writ petition was disposed of, in view of the Status Report filed by the Delhi Police, wherein it was stated that the petitioner was not removed from the site in question.

3. Notice to show cause as to why the petition be not admitted. Mr. Sanjeev Sabharwal, Standing Counsel for the DDA enters appearance on an advance copy and submits that the permission was issued by an officer, who had no authority in law to issue such a condition. He further submits that once this fact came to the notice of DDA, the permission so granted was withdrawn.

4. We have heard learned counsel for the petitioner.

5. By a communication dated 8.2.2016, the following permission was granted to the petitioner:

“This is in response to your cited letter. Regarding your request for allowing to earn your livelihood by selling fruit juice on purshcart/thela at the designated site described in the license provided by Department of Food Safety, Delhi Government Registration under Food Safety and Standards Act, 2006, under kind of business as “hawker”, it is informed that DDA have no objection to earn your livelihood on pushcart/thela by selling fresh vegetables and fruits under certificate issued by FSSAI Food Licensing & Registration system issued to you provided there is no hindrance in traffic movement and area in question is maintained as clean.”

6. By a communication dated 19.8.2017, this permission stands withdrawn. The letter dated 19.8.2017 reads as under:

“This is with reference to the above cited letter, it is to inform that for allowing by selling fresh vegetable and fruits on push cart/thela, the no objection certificate issued by this office dated 8.2.2016 is withdrawn.”

An apparent reading of the communication dated 19.8.2017, by which the permission granted to the petitioner was withdrawn, would show that the same is bereft of any reasoning. The submission sought to be raised by learned Standing Counsel for the DDA does not find mentioned in this communication addressed to the petitioner.

7. In the case of *Canara Bank v. V.K. Awasthi*, [2005] 6 SCC 237, it was held as under:

“Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of

justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants defence.

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 a 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.”

8. In our view, no doubt, the DDA has issued a communication,

withdrawing the permission in the form of a *quasi* judicial authority, but the DDA, being an instrumental of the State, is bound to act in a fair and just manner.

9. In the absence of any show cause notice and hearing granted to the petitioner, we accordingly quash the communication dated 19.8.2017 and direct the DDA to issue a show cause notice to the petitioner, grant a hearing and thereafter pass a reasoned order. The order would be communicated to the petitioner at the address mentioned in the writ petition.

10. The Rule is accordingly made absolute and the writ petition is allowed in above terms.

G.S.SISTANI, J

CHANDER SHEKHAR, J

SEPTEMBER 15, 2017
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