

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10436 of 2021

M/s Krishi Sewa Kendra, Kaliyaganj Bazar Block Palasi, District-Araria through its Proprietor Shri Fatichand Sah, Gender Male, aged about 37 Years Son of Shri Ganesh Lal Sah, resident of Village beni, Police Station Palasi, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. The District Magistrate, Araria.
3. The District Agriculture Officer, Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to Standing Counsel-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 05-10-2021 The present petition has been filed seeking quashing of the order dated 10.02.2021 contained in Memo No. 112, passed by the District Agriculture Officer, Araria, whereby and whereunder the fertilizer license of the petitioner bearing License No. 266 of 2013-14 has been cancelled on account of violation of the provisions contained in Fertilizer Control Order, 1985.

The short point raised by the petitioner is that though the petitioner has filed a detailed reply dated 15.01.2021, however, without considering the same the District Agriculture Officer, Araria has passed the impugned order dated 10.02.2021 which in any view of the matter is a non-speaking and a perfunctory order, hence is fit to be set aside.

In this regard the learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in the case of *M/S Oryx Fisheries Pvt. Ltd. vs. Union of India &*



Ors. reported in (2010) 13 SCC 427, paragraphs no. 24 to 29 whereof are reproduced hereinbelow:-

“24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India¹, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the Ld. Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are



based;”

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29. In the instant case from the underlined portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine*



Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.”

Per contra, the learned counsel for the State Shri Upendra Pratap Singh, AC to Standing Counsel-4 has not disputed the position as is existing in law.

Having regard to the facts and circumstances of the case and considering the materials on record, this Court finds that the order dated 10.02.2021 passed by the District Agriculture Officer, Araria is a non-speaking and a perfunctory order which does not spell out any cogent, clear or succinct reason for coming to a conclusion so as to warrant cancellation of the fertilizer license of the petitioner, hence the same is quashed. However, the matter is remanded back to the District Agriculture Officer, Araria who shall not only consider the reply filed by the petitioner but also afford an opportunity of hearing to the petitioner and thereafter, pass a reasoned and a speaking order within a period of eight weeks of receipt/production of a copy of this order.

The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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