

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL WRIT JURISDICTION CASE NO. 13613 of 2021

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Manoj Kumar Thakur son of Kapileshwar Thakur, resident of
Village- Surdarpur, PO- Sundarpur, P.S. Bariyarpur, District
Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary,
Department of Food and Consumer Protection,
Government of Bihar, Patna.
2. The District Magistrate, Muzaffarpur.
3. The Sub-Divisional Officer, cum Licensing Officer,
Muzaffarpur East, Muzaffarpur.
4. The Block Supply Officer, Gaighat, Muzaffarpur East,
Muzaffarpur.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate

For the Respondent/s: Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT



Date: 14-09-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 16.06.2021 passed by the Sub-Divisional Officer, East Muzaffarpur whereby and where under the PDS license of the petitioner bearing license no. 23-08-01-01/2016 has been cancelled.

3. The short issue raised for consideration by the learned counsel for the petitioner, Shri Ojha, is that a bare perusal of the show cause notice dated 12.03.2021, issued by the Sub-Divisional Officer, East Muzaffarpur would show that the only allegation levelled against the petitioner was regarding food grains not being supplied to one consumer namely Shri Kameshwar Prasad Singh, however, while issuing the impugned order dated 16.06.2021, several other issues have been considered on the basis of the stock register and other documents produced by the petitioner, nonetheless, no show cause notice with regard to such allegations/issues has ever been issued, hence, it is the case of the petitioner that the petitioner has not been given an opportunity to put forth his defence with regard



to the fresh charges/ allegations on the basis of which the P.D.S. licence of the petitioner has been cancelled vide the impugned order dated 16.06.2021. 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 herein below:-

“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 India*¹, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.B. Das, C.J. speaking for the unanimous Court 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.



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.”

4. The learned counsel for the Respondent-State, Sri Upendra Pratap Singh, AC to SC-4, has got no quarrel with the position, as is existing in law.

5. Having regard to the facts and circumstances of the case, this Court finds that the PDS license of the petitioner has been cancelled by the impugned order dated 16.06.2021, passed by the Sub-Divisional Officer, East Muzaffarpur on such charges which never formed part of the show cause notice dated 12.3.2021, hence admittedly, the petitioner has been precluded from putting forth his wholesome defence and rebutting such new charges, which have, for the first time, surfaced in the impugned order dated 16.06.2021, hence, the impugned order dated 16.06.2021 is not sustainable in the eyes of law especially being contrary to the law laid down by the Hon’ble Apex Court in the case of **M/s Oryx Fisheries** (supra), hence the impugned order dated 16.6.2021, passed by the Sub-



Divisional Officer, East Muzaffarpur is quashed and the matter is remanded back for fresh consideration, in accordance with law.

6. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.09.2021
Transmission Date	N/A

