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

Reserved on: 23.12.2022
Pronounced on: 24.12.2022

\+ **W.P.(C) 10326/2022**

JEERAMANI JAGDEESH INSTITUTE OF PHARMACY ..... Petitioner

Through: Mr Ravi Kant and Mr Mayank Manish, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Harish Vaidyanathan Shankar, CGSC with Mr Srich Kumar Mishra, Mr Sagar Mehlawat, Mr Alexander Mathai Paikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The petitioner is an existing college in the State of Jharkhand which was granted approval by the respondent-Pharmacy Council of India (PCI) to undertake admissions for 60 seats of its D.Pharm in the year 2019 and 60 seats in its B.Pharm course in the year 2020.

2. The petitioner in this case is aggrieved by the issuance of notice dated 17.02.2022 by the respondent-PCI under Section 13 of the Pharmacy Act, 1948. The relevant part of the said notice reads as under:-

> *"In view of above, notice u/s 13(1) of the Pharmacy Act, 1948 is hereby issued for withdrawal of approval of D.Pharm course*

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and examination further advising you-

a) not to make admission to D.Pharm course w.e.f. 2022-2023 academic session.

b) Route your representation in the matter if you wish to make any within 3 months of receipt of this notice through the State Government.

c) Submit a copy of Income Tax Return in respect of Principal and teaching faculty since inception of the course along with your representation through the State Government."

3. Challenge is laid to the aforesaid notice dated 17.02.2022 in the present petition.

4. The only ground of challenge articulated by Mr. Ravi Kant, the learned counsel for the petitioner in the present petition is that the notice under Section 13 of the Act, insofar as it advises the petitioner not to make admissions to its D.Pharm and B.Pharm courses with effect from 2022-23 academic session, shows the pre-determined mind of the respondents to withdraw the approval granted to the petitioner. According to him, the said notice itself has been couched in the form of an order.

5. Mr. Abhishek Singh, the learned counsel for the respondent-PCI submits that there is no infirmity in the notice dated 17.02.2022 as Section 13 of the Act contemplates expressing of intention to take action of withdrawal of approval. According to the learned counsel, the advice to the petitioner in the notice that it should not make any admissions for its D.Pharm and B.Pharm courses for academic session 2022-23 is only an indication that the respondent-PCI proposes to withdraw the approval and it cannot be said that the respondent had taken any decision.

6. As the question involved in the present case is to be decided with reference to the provisions of Section 13 of the Pharmacy Act, 1948, it is apposite to reproduce the same, which reads as under:-

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> ***"13. Withdrawal of approval.*** *–(1) Where the Executive Committee reports to the Central Council that an approved course of study or an approved examination does not continue to be in conformity with the Education Regulations, the Central Council shall give notice to the authority concerned of its intention to take into consideration the question of withdrawing the declaration of approval accorded to the course of study or examination, as the case may be, and the said authority shall within three months from the receipt of such notice forward to the Central Council through the State Government such representation in the matter as it may wish to make."*

7. *Albeit* sub-section (1) of Section 13 is not happily worded but it contemplates giving of a notice by the Central Council before the approval already accorded to the course of study is withdrawn. A careful examination of the notice issued by the respondent-PCI under Section 13 of the Act, which is essentially in the nature of a show-cause notice to be given before the withdrawal of recognition to the course, indicates that the respondent-PCI has already made up its mind to withdraw the recognition. Otherwise, there was no reason or justification on the part of the respondent-PCI to advise or ask the petitioner not to make admission to its D.Pharm and B. Pharm courses with effect from 2022-23 academic session, when the final decision of withdrawal of approval is yet to be taken.

8. Given the fact that the petitioner is a college which had been granted approval by the respondent-PCI with effect from academic session 2019-2020 onwards, the withdrawal of recognition will lead to severe civil consequences for the petitioner. The appropriate and constructive approach would have been to indicate in the notice the action of withdrawal of approval, which the respondent-PCI was proposing to take against the petitioner and the basis thereof, instead of asking the petitioner not to make admissions for the

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academic session 2022-23. This clearly shows that the respondent-PCI has already made up its mind to withdraw the approval granted to the petitioner-college.

9. Reference can profitably be made to a decision of a Coordinate Bench in ***Master Singham v. DoE***, (2019) 256 DLT 562, wherein it was held that where an impression is cast by the show-cause notice that the person issuing the notice has already made up his mind regarding the ultimate decision to be taken, it vitiates the show-cause notice *ab initio.* The relevant para of the decision reads as under:-

> *"One of the fundamental tenets, of due process, and, indeed, of the sanctified principles of natural justice, is that a notice to show cause has to be a notice to show cause, and nothing more than that. It cannot read as a determination, even before trial, of the issue at hand. Any impression, cast by a Show Cause Notice, to the effect that the person issuing the notice has already made up her, or this, mind, regarding the ultimate decision to be taken thereon, vitiates the Show Cause Notice itself, ab intio and in its entirely."*

10. I am also supported in my view by the *dicta* of the Supreme Court in ***Oryx Fisheries Private Limited Vs. Union of India & Ors.***, (2010) 12 SCC 427, in which the Supreme Court traversed through the precedents and held that the authority issuing show cause notice must not confront the person with definite conclusions. The exposition of guiding principles by the Supreme Court could be usefully reproduced as under: -

> ***"23.*** *Relying on the underlined portions in the show-cause notice, the learned counsel for the appellant urged that even at the stage of the show-cause notice the third respondent has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.*
>
> ***24.*** *This Court finds that there is a lot of substance in the*

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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 [AIR 1958 SC 300], 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 [AIR 1958 SC 300] held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned 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*

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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.*

30. *Rule 43 of the MPEDA Rules provides as follows:*

> *"43. Cancellation of registration.—Where the Secretary or other officer is satisfied that any person has obtained a certificate of registration by furnishing incorrect information or that he has contravened any of the provisions of this rule or of the conditions mentioned in the certificate of registration, or any person who has been registered as an exporter fails during the period of twelve consecutive months to export any of the marine products in respect of which he is registered, or if the Secretary or other officer is satisfied that such person has become disqualified to continue as an exporter, the Secretary or such officer may, after giving the person who holds a certificate a reasonable opportunity of making his objections, by order, cancel the registration and communicate to him a copy of such order."*

31. *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the*

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show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice."*

11. I may also profitably refer to the dicta of the Supreme Court in ***Siemens Ltd. Vs. State of Maharashtra & Others.: (2006) 12 SCC 33,*** wherein the Supreme Court held that a writ petition against a show-cause notice is maintainable when it is issued with pre-meditation. It will be apt to reproduce the following relevant observations:-

"…9. *Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.*

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10. *The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant [(2006) 11 SCC 42 : (2006) 6 Scale 66] , stating: (SCC p. 60, paras 48-49)*

> *"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.*
>
> *49. In K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] this Court held: (SCC p. 449, para 16)*
>
> > *'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "*

(See also Shekhar Ghosh v. Union of India [(2007) 1 SCC 331 : (2006) 11 Scale 363] and Rajesh Kumar v. D.C.I.T. [(2007) 2 SCC 181 : (2006) 11 Scale 409])

11. *A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."...*

12. For the reasons afore-mentioned, the impugned show-cause notice dated 17.02.2022 passed by the respondent-PCI cannot be sustained, which is set aside accordingly.

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13. Consequently, the petitioner-institute is entitled to take part in the on-going counseling and admit students for the academic session 2022-23 for its B. Pharm and D. Pharm courses.

14. Needless to say that this order shall not preclude the respondent-PCI from issuing a fresh notice to the petitioner in terms of Section 13 of the Act in the future. It is clarified that the Court has not delved into the merits of the case and the observations made here-in-above are only for the purpose of deciding the limited issue noted here-in-above.

15. The writ petition is allowed in the above terms. All pending applications also stand disposed of.

VIKAS MAHAJAN, J.

DECEMBER 24, 2022
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