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

*Reserved on: 21.12.2022
Pronounced on: 24.12.2022*

+ **W.P.(C) 16965/2022**

TILA INSTITUTE OF PHARMACEUTICAL SCIENCE

..... Petitioner

Through: Mr. Rakesh Khanna, Sr. Advocate with
Mr. Ravi Chandra Prakash and Mr. P. S.
Tripathi, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Mukul Singh, CGSC with Ms. Ira
Singh, Advocate for UOI.
Mr. Abhishek Singh, Advocate for PCI.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

CM APPL.No.53763/2022(exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 16965/2022 & CM APPL. 53762/2022(for stay)

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 D.Pharm course with effect from academic session 2019-2020.
2. The petitioner in this case is aggrieved by the order dated 02.12.2022

issued by the respondent- (PCI) whereby a decision was taken by the Executive Council of the PCI in its 380th meeting held on 31.10.2022, which was communicated to the petitioner. The operative part of the said decision reads as under:-

“In view of above, it was decided as under:-

- a) Notice u/s 13 of the Pharmacy Act, 1948 for withdrawal of approval will remain in force and institution be advised –
 - i) not to make admissions from 2022-2023 academic session.*
 - ii) forward their representation, if any, through the State Government per return of mail**
- b) It was further decided to convey the above decision to all concerned in compliance of order dt.20.10.2022 passed by Hon’ble Delhi Court by 1.11.2022 positively.”*

3. The passing of aforesaid order was preceded by an issuance of notice dated 21.01.2022 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 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.”*

4. Challenge is also laid to the aforesaid notice dated 21.01.2022 in the present petition.

5. The only ground of challenge articulated by Mr. Rakesh Khanna, the learned senior Advocate, 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 course with effect from 2022-23 academic session, shows the pre-determined mind of the respondents to withdraw the approval granted to the petitioner and the passing of the subsequent order was a mere formality.

6. Mr. Rakesh Khanna, learned Senior Advocate for the petitioner submits that the operative direction in the final order is the same as the one indicated in the notice issued under Section 13 of the Act viz., *not to make admissions to D.Pharm course with effect from 2022-23 academic session.*

7. Mr. Abhishek Singh, the learned counsel for the respondent-PCI submits that there is no infirmity in the notice dated 21.01.2022 or in the final order dated 02.11.2022 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 D.Pharm course 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.

8. 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:-

“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.”

9. *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 had 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 D.Pharm course with effect from 2022-23 academic session, when the final decision of withdrawal of approval was yet to be taken. Notably, it is the same advise/decision which has been reiterated by the respondent-PCI in its final order dated 02.11.2022.

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

11. 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 initio and in its entirety.”

12. 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 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 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 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.”

13. For the reasons afore-mentioned, the impugned show-cause notice dated 21.01.2022 and the subsequent order dated 02.11.2022 passed by the respondent-PCI cannot be sustained, which are set aside accordingly.

14. Consequently, the respondent-PCI shall issue an order of restoration of recognition and reflect the status of the petitioner as a recognized institution for its D.Pharm course and further the petitioner-institute is also entitled to take part in the on-going counseling and is allowed to admit students for the academic session 2022-23.

15. 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.

16. 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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