

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

208

CWP-26637-2017 (O&M).
Date of Decision: 14.09.2023.

ROGI WELFARE SOCIETY (NGO)

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. D.S. Patwalia, Sr. Advocate, with
Mr. Vivek Sharma, Advocate,
for the petitioner.
Ms. Anju Sharma Kaushik, DAG, Punjab.
Mr. Akhilesh Vyas, Advocate,
for respondent No.7.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated
27.06.2017 (Annexure P-21) whereby the respondent No.4 had cancelled
the provisional permission granted to the petitioner, a Non-Government
Organization to open a 'Janaushadhi Store' claimed to have been done for
the reasons that are not germane to the policy and are an afterthought and

perpetuated at the behest of respondent No.7 i.e. the Retail Sale Chemist Association.

Briefly summarized, the facts of the present case are that the petitioner-Society is a registered Non-Governmental-Organization under the Societies Registration Act, 1860, and has been working for the welfare of the poor people and patients. Charitable work is being undertaken by the petitioner-Society including educating masses against drug abuse and organizing medical camps as well as blood donations camps and by providing food and medicines etc. to the patients.

The Union of India circulated a scheme in the year 2008 by the name of Pardhan Mantri Bhartiya Janaushadhi Kendra (PMBJAK) with an objective to provide quality medicines at affordable prices for all and particularly for the poor and the under-privileged persons through the exclusive outlets termed as “Janaushadhi Kendra.” The underlying object behind supporting such generic medical stores was to reduce and redefine the cost of treating persons and to bring down the healthcare budget and to make it affordable and within the reach of every citizen. The mission aimed at creating awareness among public regarding generic medicines and mandated the medical practitioner not only to create such awareness but also to make such prescription so that the high cost of branded drugs could be prevented and the patients could be saved of from having to incur extra cost on branded medicines.

In the said process, the Union of India issued guidelines to be followed for the submission/processing of applications for opening of Jan Aushadhi Generic Drug Stores. As per the guidelines attached as Annexure P-3 with the present petition, a Jan Aushadhi store could be opened by any

entity, such as, a reputed NGO/Charitable Society/Institution/Self-help Group etc. It was further prescribed in the aforesaid guidelines that the State Government shall identify the operating agency and provide free space in the hospital premises for such operations where any NGO has been recommended/approved by the Government to run such stores. The Department of Health would issue an appropriate recommendation(s) in favour of the operating agency and also issue instructions to the District Hospital Authority to provide the minimum space conforming to the standards as approved by the Bureau of Pharma PSUs of India (BPPI) in the hospital premises i.e. 120 square feet. The location of the store was to be at such a place which is easily accessible to the OPD patients and preferably at the entry of the hospital and to be given to the agencies free of costs. Suitable instructions were required to be issued by the State Government to the Hospital/Doctors for prescribing the generic medicines. Before the start of the Jan Aushadhi Store, the BPPI was to make arrangement for supply to the Jan Aushadhi Stores and an appropriate agreement was required to be entered in the format prescribed with the BPPI, Health Department of the State and the operating agency. A margin of 16% for the Jan Aushadhi Store on the MRP of each drug was inbuilt in the Scheme. Additionally, the Jan Aushadhi Stores were also eligible to avail onetime financial assistance of Rs.2 Lakh as establishment cost and Rs.50,000/- as one time startup costs. The eligibility criteria and experience of 03 years of successful operation in welfare activities supported by audited accounts for the last three years was prescribed.

Certain other instructions and infrastructural facilities have also been prescribed in the said guidelines.

Pursuant to the aforesaid scheme notified by the Union Of India, the State of Punjab in the Department of Food and Drugs Administration issued the necessary instructions to all the Zonal Licensing Authorities as well as to all the Drug Control Offices in the State of Punjab to promote use of generic medicines at affordable prices under the above said Scheme and to grant retail licenses to the Jan Aushadhi Stores expeditiously. Significantly, the aforesaid instructions were issued in compliance of directions passed by a Division Bench of this Court in CWP No.18723 of 2009 titled as Navneet Kapoor Vs. State of Punjab and as per the advice given by the Advocate General, Punjab for relaxation of the said guidelines to consider the applications filed under the name and style of the Jan Aushadhi Medical Store for grant of retail sale licenses in the urban and rural areas. The strict compliance of the requirements was prescribed thereunder:-

“1) The applicant should apply Retail sale licence with the name & style of "Jan Aushadhi Medical Stores" through Its Proprietor / Partner / Director of the authorized firm/ authorized person.

(2) This policy will be applicable for grant of retail sale licence to "Jan Aushadhi Medical Store” in the urban areas only. No application for grant of such licence in the rural area will be entertained.

(3) The applicant must fulfill the conditions as specified under Rule 64 of the Drugs & Cosmetics Rules, 1945.

(4) A retail sale licence granted under these guidelines should be dealing only in items as approved and made available by the

Bureau of Pharma Public Sector Undertakings of India (BPPI) only.

(5) The retail sale licence granted under these guidelines will be non- transferable on the name & address of any other person and in case the licensee wants to close his business with BPPI, the licensee shall ensure to surrender such licences before the respective Licensing Authority for cancellation.”

The petitioner Society claims to fulfill the conditions prescribed in the aforesaid instructions of 2016 and there is no breach thereof specified or pointed out by the respondents in the impugned order that has been served upon them while cancelling the permissions. It is averred that vide communication bearing Memo No.BPPI/06/PUN/3320/2016 PMBJK dated 05.01.2016, the Bureau of Pharma PSUs of India considered the application of the petitioner-Society for opening of the New Pardhan Mantri Bhartiya Janaushadhi Kendra and an in-principle approval was granted to the petitioner, subject to completion of the requisite formalities prescribed therein. It is contended that having obtained the in-principle approval, the petitioner-Society applied for allotment of a shop to the Guru Nanak Dev Hospital Complex, Majithia Road, Amritsar. The Directorate of Research and Medical Sciences, Punjab issued directions to the Principal Government Medical College, Amritsar and all other functionaries of the Government, pursuant to the letter dated 24.10.2016 for opening of the Jan Aushadhi Store vide Communication dated 10.11.2016. In response thereto, it was pointed out that the Jan Aushadhi Store had already been opened at Rajindera Hospital, Patiala and it was conveyed that the Principal Government Medical College, Patiala had informed that the

petitioner-Society had been identified for opening the Jan Aushadhi Store in the Government Medical College, Patiala as well. The Principal of the Government Medical College, Amritsar was also directed to organize a meeting with the petitioner-Rogi Welfare Society at the earliest and that the place must be identified for opening of the Jan Aushadhi Store and upon identification of the same, the NGO would apply to the BPPI for the necessary permission to operate the Jan Aushadhi Store. The action was required to be updated to the Government as well.

In furtherance thereto, the application dated 25.11.2016 was submitted by the petitioner-Society and a review meeting was held between the petitioner-Society as well as the principal of the Government Medical College, Amritsar along with the Medical Superintendent of Guru Nanak Dev Hospital, Amritsar and other officials. After discussions held in the meeting and noticing that no application other than that of the petitioner-Rogi Welfare Society had been received and upon concluding that the petitioner-Society/NGO was duly registered, it was decided that the application of the petitioner be forwarded to the BPPI for according sanction. It was also decided that if registration of the NGO is found to be correct then it can apply and if it obtains permission from the BPPI then the duty of selecting of place for opening the Jan Aushadhi Store will be assigned to the Medical Superintendent of Guru Nanak Dev Hospital, Amritsar. The extract of the said review meeting are reproduced hereinafter below:-

“The decision of extending time limit for receiving applications for opening a Jan-aushdhalya to 7 more days was taken in the meeting of Rogi Welfare committee dated

07.12.2016. After the extended period expired today a meeting is called upon on dated 14.12.16. The committee members were informed that no new application has been received. That is why a joint decision was taken that out of the applications which were received earlier one application for opening a NGO will be forwarded to Bureau of Pharma Public Sector (BPPI) Gurgaon for sanction. This NGO is registered in the name of Rogi Welfare Society, S.C.O.17 Majitha Road, Amritsar. It is also decided that if registration of the NGO is found to be correct then it can apply. If this organization received the permission from the BPPI then the duty of selecting the place for opening the Jan-aushdhalya will be assigned to the Medical Superintendent, Guru Nanak Hospital, Amritsar. In this concern whatever guidelines has been given by the Govt. Medical Superintendent, Guru Nanak Hospital, Amritsar, will have full authority to follow them.”

The Superintendent of the Guru Nanak Dev Hospital thereafter submitted a letter bearing No.1162/General dated 15.12.2016 to the Director, Department of Medical Research and Sciences, Punjab, informing that a meeting between the petitioner-Rogi Welfare Society and Guru Nanak Dev Hospital had already been held for opening of the Jan Aushadhi Store and the space had also been identified. It was also admitted that an application has been received by the respondent Guru Nanak Dev Hospital Complex, Majithia Road, Amritsar from the petitioner-Society, along with the approved site plan/map for further necessary action in terms of the approved format giving details of the registration of the society as well as the identified location of the proposed store with complete address. An undertaking was also contained therein that the petitioner-Society would comply with all the terms and conditions stipulated for opening of Pardhan

Mantri Bhartiya Janaushadhi Kendra and that in the event of any information being found incorrect, the application was liable to be rejected along with legal disciplinary action that may be initiated by the respondents. Reference is further made to the Email dated 04.01.2017 received by the petitioner from the BPPI to initiate construction of shop at the allocated site by the Hospital for Pardhan Mantri Bhartiya Janaushadhi Kendra immediately and to apply for drug license in furtherance to the Principal, Government Medical College, Amritsar order No.29013/Development dated 15.12.2016 and the Medical Superintendent of Guru Nanak Dev Hospital, Amritsar, letter No. 1162/General dated 15.12.2016.

Pursuant to the aforesaid provisional in-principle approval having been granted and directions having been issued for initiating construction of the Drug Store, a letter was also received by the petitioner from the Medical Superintendent of Guru Nanak Dev Hospital complex, bearing No.796/General dated 24.01.2017, which reiterated the factum of the meeting held between the petitioner-Society as well as the competent officials of the respondent hospital and also that it had been decided in the meeting that the Jan Aushadhi Store could be opened at the space in front of the OPD as jointly decided by the Principal as well as the Medical Superintendent of the Government Medical College, Amritsar.

The permission for raising construction on the site for opening Pardhan Mantri Bhartiya Janaushadhi Kendra was granted and the site plan for the said shop was approved. The petitioner-Society thereafter applied for grant of electricity connection and also submitted an application to the Zonal Licensing Authority (Drugs), Office of Civil Surgeon, Amritsar, Punjab on 01.03.2017 for grant of retail drug sale licence. Along with the

application, they had also appended the registration with the Punjab Pharmacy Council, Chandigarh and appointment of additional qualified person vide registration No.30515 dated 12.03.2009 valid upto 31.12.2018 with the Punjab Pharmacy Council. All the requisite documents for release of the licence had been appended along with the said application.

Vide letter No.4937/Development/Pending dated 06.03.2017, the Principal, Government Medical College, Amritsar, called upon the petitioner to furnish details as regards the Pharmacist who would be working on behalf of the Society and also to submit the experience certificate of the same. It was also informed that the petitioner was required to sign MOU and that till such time that the Memorandum of Understanding is not signed, the store shall not be opened. The Memorandum of Understanding was eventually signed on 28.03.2017 between the petitioner-Society as well as the Guru Nanak Dev Hospital, through Rogi Welfare Society i.e. the parent body. The said Memorandum of Understanding was required to remain in force for a period of 36 months commencing w.e.f. 28.03.2017. The petitioner-Society submitted the duly signed Memorandum of Understanding to the respondent authorities as per the requirements prescribed by them. However, the lock of the Jan Aushadhi Store had not been opened even though the conditions prescribed for opening of the Jan Aushadhi Store was till the signing of Memorandum of Understanding. The petitioner accordingly submitted a letter to the respondents to direct the Medical Superintendent to open the lock of the Jan Aushadhi Store so that the same could be started in public welfare and at the earliest.

At the same time, perturbed with the developments that had taken place in the form of the opening of the Jan Aushadhi Store for

providing generic medicines at affordable prices, the retail sale chemist association preferred CWP No.5221-2017 before this Court. The said writ petition was disposed of on 15.03.2017 without commenting on the merits of the case and with a direction to the President of Bureau of Pharma PSUs of India (BPPI) as well as the Medical Superintendent, Guru Nanak Dev Hospital, to consider the representation of the Association and to communicate the order passed to the concerned authority after complying with the principles of natural justice. The above said ploy was used as a means to delay the opening of the Jan Aushadhi Store. Perturbed by the said developments, the petitioner-Society submitted a representation dated 07.04.2017 to the officials pointing out that all the necessary compliances are done and that the petitioner had undertaken all the activities required to open the Jan Aushadhi Store meant for larger welfare of the General Public. However, in compliance to the order passed by the High Court in CWP-5221-2017, the respondents passed the impugned order dated 27.06.2017 whereby conveying that the provisional permission granted to the petitioner-Society to open the Jan Aushadhi Store has been cancelled. Reference was made to the alleged non-compliance of the policy regarding allotment of Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospital vide Memo No.11/40/06-4HBIII/917 dated 18.02.2008. However, before parting with the order, the opinion was recorded that the retail sale chemist association has raised objections which are justified and in larger public interest and that the cancellation was thus ordered. The same is now subject matter of challenge in the present writ petition.

Reply by way of affidavit of Dr.Surinder Paul, Medical Superintendent, Guru Nanak Dev Hospital, Amritsar, on behalf of respondents No.1 to 4 had been filed wherein the respondents have not disputed the factual aspects as noticed above, however, it has been averred that the application in question has been submitted by the President Manoj Jain, who is member of the Rogi Welfare Society and that he is brother of one Sanjeev Jain. They are having many shops in various hospitals including at the Guru Nanak Dev Hospital, Amritsar; shop in T.B. Sanatorium and cases under the Public Premises Act have also been filed by the Government against said Sanjeev Jain. The fee deposited along with the application with the Bureau of Pharma Public Sector Undertakings of India was also submitted from the joint account of Manoj Jain and Sanjeev Jain and that even the draft had not been prepared from the account of the Rogi Welfare Society (NGO). Further, the application for allotment of shop was submitted under the letterhead of Rogi Welfare Society, Amritsar, which was registered on 18.11.2016 with the Additional Registrar of Societies, Amritsar and only after the issuance of the letter dated 01.11.2016, by the Director, Research and Medical Education, Punjab, Mohali, the permission to construct the shop was granted under the Pardhan Mantri Bhartiya Janaushadhi Kendra on 24.01.2017. The documents submitted by the petitioner along with the application did not contain the original registration certificate of the Pharmacist-cum-computer operator or the three years' experience of successful operation of welfare activities supported by audit account of last three years. The same being a pre-requisite for signing and before Memorandum of Understanding could be finalized, the pre-requisite for allotment of shop had not been complied with. The provisional

permission granted to the petitioner society was thus rightly cancelled vide order dated 27.06.2017 and that a provisional permission does not entitle the petitioner society to claim allotment of the shop as a matter of right especially when the allotment is found to be against the Government policy.

A separate reply was also filed on behalf of respondent No.6- Drugs Inspector, Amritsar wherein, there is reiteration of policy guidelines dated 13.07.2000 for running of a chemist shop and commercial use of land available in Government Hospitals. It was averred that an application had been received from the petitioner for the grant of retail sale drug licence in the name of M/s Pardhan Mantri Bhartiya Janaushadhi Kendra, inside Guru Nanak Dev Hospital, outside OPD, Majithia Road, Amritsar and that he failed to submit approval from the Government regarding opening of chemist shop in Shri Guru Nanak Dev Hospital, Amritsar, hence the application for the grant of fresh retail sale drugs licence was rejected by the Licensing Authority due to non-compliance of policy guidelines dated 13.07.2000. Reference was made to the provisions of Rule 64 (3) of the Drugs and Cosmetics Rules, 1945 to contend that any person who feels aggrieved of the orders passed may prefer an appeal before the Appellate Authority.

The State of Punjab also appended the policy dated 18.02.2008 bearing No.11/40/06/-4HBIII/917 regarding allotment of Shops/Booths/Space in Complex of Medical/Dental/Ayurvedic College and attached Hospital.

It is submitted in the aforesaid policy space for chemist shop has to be provided by way of an open auction on three years lease through the proper publication of the tenders with the stipulation of an increase of

rent @ 5% every year, subject to the reservation to be given to various categories mentioned in the said policy.

Learned Senior counsel appearing on behalf of the petitioner has vehemently argued that the respondents have passed the order pursuant to the representation submitted by the Retail Sale Chemist Association i.e. respondent No.7 and in purported compliance of the order passed by the High Court without complying with the principles of natural justice. He contends that respondent authorities have failed to appreciate that the policy in respect of allotment of booths as circulated by the respondent –State of Punjab in the year 2018 is not applicable to the Pradhan Mantri Bhartiya Janaushadhi Kendra Scheme as the said scheme has been formulated subsequently and was aimed at extending a social welfare measure and to provide affordable medicines to the patients. The object of the revenue maximization, as may be the object while granting space for a drug storage/pharmacist of branded medicines, was not the motive behind the Scheme. The guidelines as approved by the Government of India under the above said Scheme stipulated that the sites ought to be allotted rent free. So much so, the Government of India was extending capital subsidy as well as financial assistance for working capital and to arrange for the medicines in order to promote the said scheme. The laudable object of the scheme was to ensure that the generic drugs, with a maximum retail trading margin of 16%, were available to the patients so that affordable treatment is within reach of the larger masses. Directions were specifically issued to the Medical Colleges/the doctors to ensure that they prescribe generic medicines to the patients instead of branded medicines. Thus the Scheme being a Social Welfare Scheme was meant and intended for to reach to

maximum number of people. Instead of revenue maximization, the emphasis of the Government was to reduce the operating cost of such spaces. Hence, the revenue maximization mandate in matters relating to commercial spaces would not be applicable to such allotments which subserve larger public interest. It was also pointed out that prior to grant of provisional permission to the petitioner, detailed negotiations were held and applications were invited by the respondent authorities wherein the petitioner was a participant. A Committee comprising of high level officials of the respondents had entered into various meetings/review meetings before entering into a settlement with the petitioner and making an allotment. The site was accordingly identified and order of allotment was passed. It was pursuant to the above said allotment that an application had been submitted by the petitioner with BPPI for grant of the license and that the same was also accorded. The petitioner was granted permission to raise construction of the shop at the identified premises and the needful has also been done by the petitioner. The copy of the MOU was also signed and sent by him, hence, there was no default on the part of the petitioner in complying with any of the terms for starting of the Jan Aushadhi Store within the premises.

The petitioner having made to alter his position pursuant to the agreement signed by the respondents and the assurance given, the respondent State cannot thereafter turn back on its promise, permission and assurances extended and it would be barred by estoppel from passing any order to the contrary. It is vehemently argued that the real object of cancellation of the permission was not on account of any non-compliance of the terms and conditions as the requisite approvals had been granted to the

petitioner only after the eligibility conditions had been tested before the permission granted. The stand of the respondents is not well founded. The only reasons for initiation of the action was the pressure built up by the retail sale chemist association and that the authorities entered into an unholy nexus with respondent No.7 so as to sub-serve the interest of the private chemist Association.

Learned State counsel, on the other hand, has reiterated the averments noticed above and as reflected in the order passed by the authorities concerned to contend that the petitioner happened to be the brother of one Sanjeev Jain and application money for registration with the BPPI was not from the account of the petitioner society and instead was from the joint account of Manoj Jain as well as Sanjeev Jain. Further, there were numerous other chemist shops along with the Jan Aushadhi Stores that had been opened by the petitioner and/or in various hospitals in and around the State of Punjab. It was also argued that the registration of the petitioner being in the year 2016, it did not fulfill the eligibility requirements prescribed in the Jan Aushadhi Store for opening the same.

Learned counsel for respondent No.7 contends that the only reason for the respondents to submit an application to the authorities was to ensure that only eligible and competent persons are allotted the spaces as per the applicable policies and that they have no further interest. However, they had espoused grievance against the arbitrary action of the respondent State in making an allotment without ensuring compliance of the modalities notified by the State of Punjab including the policy for allotment of Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospital as per the guidelines of 2018. The

respondent would have no objection to any allotment being made by the respondents hospitals subject to the eligibility conditions and compliances required under the Scheme.

Controverting the arguments, learned Senior counsel appearing on behalf of the petitioner contends that the arguments raised by the respondent and drawn from the reply are in fact an afterthought and that no objection qua eligibility had ever been conveyed to the petitioner at any point of time. The petitioner having crossed that bridge much before the grant of permission, those terms and conditions cannot be revisited. There was no concealment of any information by the petitioner at the time of submission of the application and that all requisite documents had always been submitted by the petitioner for scrutiny by the respondents and the permission was accorded on consideration of the said documents and after recording satisfaction that necessary compliances had already been made. He further submits that laudable object of the Scheme stands defeated by the delayed opening of the Jan Aushadhi Store and the fact that the respondents never initiated any process for allotting it to anybody else clearly shows their nexus with the Retail Chemist Sale Association.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

The facts noticed above are not much at issue and the issue which arises in the present petition as to whether the impugned order was passed by the respondent Authorities for valid considerations and in a manner known to law.

The impugned order has been perused and it is evident from the perusal of the said order that no opportunity of hearing was ever extended to

the petitioner and that said order was passed on the application/complaint submitted by the Retail Chemist Sale Association. The relevant part of the order is extracted as under:-

“6. That the allotment of the shop to Rogi Welfare Society is against the Government policy regarding allotment of shops/ booths/ space in complex of Medical / Dental Colleges/ Ayurvedic Colleges & attached hospitals vide memo No. 11/40/06-4HBIII/ 917 dated 18-2-2008. The relevant paras of the said policy is reproduced as under:

"3. Chemist Shops:

The space for one Chemist shops should be provided as per requirement in the hospitals/ complexes and these should be allotted in open auction on three years lease through the proper publication of the tenders, with the stipulation of increase of rent @5% every year, subject to the reservations to be given to various categories mentioned hereafter."

8. No such concession shall be granted to any person who has been a defaulter of rent or adherence to any term of agreement."

Keeping in view all the facts stated above, the undersigned is of the opinion that representation of the Retail Sale Chemist Association for not allowing Mr. Manoj Jain to open another shop is justified and in the public interest. Therefore, it is hereby decided that the provisional permission granted by the authorities to open the Jan Aushadhi Store to the Rogi Welfare Society (NGO) is hereby cancelled."

The respondent State has not been able to advert or inform as to whether any opportunity of hearing was granted to the petitioner or not. Further, certain aspects have been noticed by the respondents in the impugned order of cancellation. Notwithstanding that the respondents could

not refer to any provision of the Scheme under which the said facts entailed any illegality or consequences against registration and/or opening of any other the Jan Aushadhi Store in the Government Hospital merely because an application is submitted through a joint account or that the applicant also held any other pharmacy shop in other hospitals. The disqualification apparently as entailed on the quoted context of the policy dated 18.02.2008, is in the nature of allotment of Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospital. The object of the said policy being to maximize revenue as allotment of Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospital was allotment of state largesse for commercial purposes. The object of allotment of the Jan Aushadhi Store Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospitals was intended as a public welfare measure. Hence, special clauses in the Scheme had been provided. The intent of the Scheme being welfare measure rather than to aid the revenue maximization is well reflected from the fact that the scheme stipulated a rent free allotment of space and also capped the profit margin at 16%.

The State also could not refer to any of the provisions under which the aforesaid policy for Shops/Booths/Space in complex of Medical/Dental Colleges/Ayurvedic Colleges and attached hospital was held applicable even to the aforesaid welfare scheme or was made binding with respect to the allotment of the Jan Aushadhi Store as well. The evident reason which flows from a reading of the said order is that it was largely to act as a solace to the Retail Sale Chemist Association so that the Jan Aushadhi Store is not put in operation.

It is undisputed that the cost of the generic medicines is many times lower as compared to the branded medicines and that in the event of generic medicines being prescribed and sold through the retail outlets within the premises, the business, turnover as well as profit margins of the drugs stores/pharmacists operating the hospital premises would have fallen manifold. A perusal of the order shows that the decision made by the respondent authorities is being supplanted by the reasons which are an afterthought.

There is no reference to the entire trail of meetings and documentation, the State object, the negotiations and permissions etc. Even the objects of the Scheme and its salient features have not been taken into consideration.

Besides, it is not in dispute that civil enforceable rights came into being after grant of letter of acceptance and sanctions for construction. The petitioner even raised construction of shop after approval of site plan. The order of cancellation infringed on the right that had accrued in favour of the petitioner and it was entitled to an opportunity of hearing before any adverse order was to be passed.

Even though, decision making is a prerogative of the Executive, however, the procedure of decision making and reasons for such decision making is subject to judicial review. Where the process or the reasons smack of arbitrariness, discrimination, impropriety or violation of principles of natural justice, Court can examine the same and pass orders.

I find that the order passed by the respondent authorities suffers from gross violation of principles of natural justice and also fails to take into consideration the object of the Scheme.

Accordingly, the present writ petition is allowed. The impugned order dated 27.06.2017 (Annexure P-21) is set aside. The respondent authorities are directed to pass a fresh order after affording an opportunity of hearing to the petitioner and keeping in view the developments that took place along with the object of the Scheme. Needless to mention that the poor people and patients have remained deprived of the object of the Scheme for long. The shop has not been made operational even till date which reflects that the respondents never took steps to open the shop at all and never invited any bids even thereafter. Taking into consideration the delay that has already occurred, let a decision be taken by the respondent authorities expeditiously and preferably within a period of 04 months of the receipt of the certified copy of this order. Status quo as regards the shop in question shall be maintained till passing of such order.

Pending misc. applications, if any, shall also stand disposed of accordingly.

September 14, 2023
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No