

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESHAT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV
ON THE 10th OF MARCH, 2022
WRIT PETITION No. 18616 of 2019**

Between:-

**PRATHMIK VANOPAJ SAHKARI SAMITI MYDT
MOHANGARH, DISTRICT TIKAMGARH (M.P.)
THROUGH THE MANAGER SHIVENDRA
AHIRWAR, AGED ABOUT 35 YEARS, SON OF
SHRI SANTRAM AHIRWAR, R/O TEHSIL
MOHANGARH, DISTRICT TIKAMGARH
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI VISHNU CHANDRA DWIVEDI- ADVOCATE)*
AND**

- 1. THE STATE OF MADHYA PRADESH, THROUGH
THE SECRETARY, FOOD, CIVIL SUPPLIES AND
CONSUMER PROTECTION, MANTRALAYA,
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. THE COLLECTOR, TIKAMGARH,
DISTRICT TIKAMGARH (MADHYA
PRADESH)**
- 3. SUB DIVISIONAL OFFICER, JATARA,
DISTRICT TIKAMGARH (MADHYA
PRADESH).**

....RESPONDENTS

(BY SHRI C.L. SETHI-PANEL LAWYER)

WRIT PETITION No. 23222 of 2019

Between:-

**PRATHMIK KRISHI SAKH SAHKARI SAMITI
MYDT. LIDHORA DISTRICT TIKAMGARH (M.P.),
THROUGH THE ASSISTANT MANAGER ANIL
KUMAR SIRVAYIA AGED ABOUT 28 YEARS, S/O
SHRI CHINTAMAN SIRVAIYA R/O LIDHORA,
TEHSIL LIDHORA AND DISTRICT TIKAMGARH
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VISHNU CHANDRA DWIVEDI- ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH, THROUGH THE SECRETARY, FOOD, CIVIL SUPPLIES AND CONSUMER PROTECTION, MANTRALAYA, VALLABH BHAWAN BHOPAL (MADHYA PRADESH).**
- 2. THE COLLECTOR, TIKAMGARH, DISTRICT TIKAMGARH (MADHYA PRADESH)**
- 3. SUB DIVISIONAL OFFICER, JATARA, DISTRICT TIKAMGARH (MADHYA PRADESH).**

(BY SHRI C.L. SETHI-PANEL LAWYER)

This petition coming on for admission hearing this day, this court passed the following:

ORDER

The petitioner in the instant petition is challenging the order dated 31.07.2019 (Annexure-P-2) passed by the Sub Divisional Officer, Jatara, District Tikamgarh (M.P.), whereby, the order of attachment of the shops to the petitioner Society was withdrawn with further direction to attach the said shops to other Society.

2. This Court on 09.09.2019, had taken into consideration that the impugned order is passed as per the rationalisation policy at the instance of respondent No.2 Collector. Without relegating the petitioner to the said

authority, the writ petition was entertained and the impugned order dated 31.07.2019, has been stayed.

3. Learned counsel appearing for the petitioner submits that during the pendency of the instant writ petition another order dated 30.09.2019 has been passed which has been challenged in a separate Writ Petition No.23222/2019. Since both the matters relate to the same Society, therefore, the same are being heard analogously.

4. Learned counsel appearing for the petitioner submits that the action of the respondent is in violation of principle of natural justice and, hence, the same deserves to be set aside.

5. Learned counsel appearing for the State opposes the prayer and he submits that the impugned order is only an order of attachment of the shops which were earlier attached to the petitioner, are sought to be withdrawn and are being attached to the other shops for the reasons assigned in the impugned order.

6. Clause-14 of the Public Distribution System Control Order, 2015 (hereinafter referred to as 'PDS Order 2015' for short), provides for inspection and supervision. Clause-16 of PDS Order 2015, provides for punishment and penalty. Sub-clause (3) of Clause 16 of PDS Order 2015, says that in case of suspension of a fair price shop, the fair price shop allotment authority shall issue show cause notice to the concerned fair price shop within 10 days and as far as possible, pass final order within three months. As per Sub-clause (4) of Clause-16 of PDS Order 2015, fair price shop allotment authority, after giving reasonable opportunity to fair price shop to submit its representation in writing and following principle of natural justice, may cancel authority letter mentioning the reason thereof. There is no provision for attachment.

7. No doubt, in absence of any specific power of attachment also, the authority can take an administrative decision as per the need of the situation, however, when attachment is removed, the minimum requirement of administrative action to assign reason must be fulfilled. However, there can always be an exception to the normal rules of natural justice, but those exceptions have to be on the basis of facts of the individual case where the action is required to be taken immediately and any opportunity of hearing would frustrate the very object of such an action, but the same is not the case here.

8. This Court is of the considered view that whether it is an action of suspension or attachment of the shop, the opportunity of hearing before taking any action will ensure fairness and removes the possibility of arbitrariness and, therefore, if such an action is taken after due notice to the concerned society, the same would definitely serve the interest of justice. There is no opportunity of hearing given to the petitioner and neither any reason is assigned as to what had prevented the authorities from granting opportunity of hearing to the petitioner.

9. The petition stands allowed. The impugned order dated 31.07.2019 (Annexure-P-2) being in violation of principles of natural justice and devoid of any reasons is hereby set aside. The respondents, however, are at liberty to proceed against the petitioner, in accordance with the PDS Control Order, 2015, if so warranted, after affording due opportunity of hearing and assigning reasons for the decision.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

A.Praj.