

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No.8063/2020

Deendayal Prathmik Shahkari Upbhokta Bhandar, Hata

Versus

State of M.P. and others

Date of Order	25.09.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi, J.
Whether approved for reporting	YES
Name of counsels for the parties	For Petitioner : Shri D.K. Tripathi, Advocate. For respondent Nos.1 to 4/State : Shri Pushendra Yadav, Additional Advocate General. For respondent No.5 : None.
Law laid down	Clause 16 of the Control Order 2015, deals with the penalty, suspension and cancellation of authority letter of fair price shop. No show cause notice is required to be issued before suspension, but following the principle of natural justice before taking final decision of cancellation of fair price shop, opportunity of hearing is required. This is the mode prescribed for complying the principle of natural justice. Sub-clauses 3, 4 and 5 are in continuation of each other and

	should not be read independently.
Significant Para Nos.	11 to 28

Reserved on : 11.09.2020

Delivered on : 25.09.2020

(O R D E R)

Although there were three connected petitions and with the consent of learned counsel for the parties, all have been heard finally as the counsel for the petitioner has submitted that the issues involved in these cases are interconnected. He has also submitted that in one of the petitions i.e. W.P. No.7515/2020, the State has filed reply and on the basis of the same, the present petition can also be decided. Thus, with the consent of the learned counsel for the parties, the matter is heard finally.

2. This petition is filed under Article 226 of the Constitution of India questioning the legality, validity and propriety of the order dated 30.05.2020 (Annexure-P/1) whereby respondent No.3 has passed an order of termination of fair price shop of the petitioner/society.

3. The challenged is made *inter alia* on the grounds that the impugned order has been passed in violation of principle of natural justice and the same is contrary to the provisions of sub-clause (4) of Clause 16 of the Control Order i.e. known as M.P. Public Distribution System (Control) Order, 2015 (hereinafter referred to as the 'Control

Order, 2015').

4. The learned counsel for the petitioner has contended that the impugned order is also liable to be set aside as it has been passed in contravention of the directions issued by this Court in W.P. No.7507/2020 (Deendayal Prathmik Shahkari Upbhokta Bhandar Vs. State of M.P. and others). He has further contended that the impugned order also suffers from *mala fide* as the same has been issued with the instructions of the appellate authority i.e. the Collector (respondent No.2) and also at the instance of respondent No.5, who is a Member of Legislative Assembly of the ruling party.

5. The State has filed its reply in W.P. No.7515/2020 and it is submitted by the counsel for the State that the reply submitted by the respondents/State shall cover the controversy involved in the present case and on the basis of the stand taken therein, this petition can also be decided.

6. To resolve the controversy involved in this case, the relevant facts, which are necessary for proper adjudication of the present case, are briefly stated hereinbelow:-

(6.1) That the petitioner is a registered Cooperative

Society, registered under the provisions of the Cooperative Society Act, 1960 (for short the 'Act 1960'). The petitioner/society was allotted fair price shops of Gandhi Ward and Shashtri Ward, Hata. On account of some rivalry with the petitioner, respondent No.5 wrote a letter to the concerned Minister for taking penal action against the shop of the petitioner alleging that she is receiving complaints about irregularities committed by the said society.

(6.2) In response to the said letter, the concerned Minister wrote a letter to respondent No.2 (Collector Damoh) referring the concern of respondent No.5, asking him to initiate proceedings for suspending the shop of the petitioner. Thereafter, on 23.04.2020, a show cause notice was issued attributing the irregularities found in the shop of the petitioner as per the letter dated 21.04.2020 written by the Collector Damoh.

(6.3) The petitioner submitted his reply to the said show cause notice on 04.05.2020 (Annexure-P/15), but without considering the said reply, the order dated 14.05.2020 (Annexure-P/18) was

passed placing the shop of the petitioner under suspension.

(6.4) The petitioner filed a petition i.e. W.P. No.7507/2020 challenging the order dated 14.05.2020 whereby his shop was placed under suspension. The said writ petition was decided by this Court vide order dated 22.05.2020 setting aside the order dated 14.05.2020 mainly on the ground that the reply filed by the petitioner was not considered by the authority, which amounted to violation of the principle of natural justice, therefore, the petition was disposed of giving liberty to the respondents to pass a fresh reasoned order after considering the reply of the petitioner by following the principle of natural justice. The order of the High Court is available on record as Annexure-P/19.

7. After remitting the matter to the authority, respondent No.2 passed the impugned order dated 30.05.2020 (Annexure-P/1) and terminated the shop of the petitioner, against which, the present petition has been filed on the grounds as have been mentioned hereinabove.

8. However, the respondents have filed reply in a petition i.e. W.P. No.7515/2020, but in the said petition, the

order dated 30.05.2020 is not under challenge. In the said reply, the respondents have justified their action in which recommendation was made for registration of an FIR against the petitioner, but the counsel for the respondents at the time of arguments has justified their action relying upon the provisions of the Control Order 2015, under which, Clause-16 deals with the punishment and penalty and as per the respondents it is undisputed that the same deals with the suspension of fair price shop and cancellation of authority letter of fair price shop that too after following the principle of natural justice. The mode of following the principle of natural justice is to issue show cause and to give an opportunity to submit the stand in writing by the fair price shop, then pass final order considering the stand of the fair price shop.

9. Shri Pushpendra Yadav, learned Additional Advocate General has submitted that from the impugned order it is clear that the requirement of following the principle of natural justice as contemplated in clause 16 of the Control Order 2015 has been complied with, therefore, the impugned order does not suffer from any illegality or irregularity and as such, does not call for any interference. He has further submitted that sub-clauses (3) and (4) are not independent clauses and should not be read in isolation

because sub-clause (4) is a continuation of sub-clause (3) and if an opportunity of hearing is given and written submission has been called for by the authority and after considering the same final order is passed as has been done in the present case, then the said order cannot be attacked on the point that it is in violation of principle of natural justice.

10. *Per contra*, Shri Tripathi appearing for the petitioner has submitted that sub-clauses (3) and (4) are independent clauses and both the situations i.e. suspension and order of cancellation of fair price shop need separate action and as per the provisions, the authority was under obligation to issue show cause notice before suspension and reply of the same, if any, is filed shall be considered and then by issuing separate notice and asking reply to the same, final order can be passed. He has also submitted that as per the order passed by this Court on earlier occasion in W.P. No.7505/2020, it is clear that the order of suspension was under challenge but the reply of show cause notice issued before suspension since not considered by the authority, therefore, the High Court was of the opinion that the principle of natural justice was not followed, set aside the order of suspension and remitted the matter to the authority for passing a fresh order considering

the reply of show cause notice filed by the petitioner. Thereafter, the authority not only passed the order of suspension but also proceeded further and by invoking the power provided under sub-clause (4) passed the order of cancellation of fair price shop without giving further opportunity as has been mentioned in sub-clause (4) and as such, the order suffers from violation of principle of natural justice and is not sustainable.

11. After hearing the rival contentions of the learned counsel for the parties, the core question arises for consideration of this Court is whether the impugned order suffers from violation of principle of natural justice or it has been passed by the authority following the requirement of principle of natural justice as has been provided under sub-clauses (3) and (4) of Clause 16 of the Control Order 2015.

12. For assessing the merits of the rival submissions, it would, at the outset, be necessary to go through the respective provisions of Clause 16 of the Control Order 2015. If the provisions of respective clauses are seen at a glance, they do not give clear meaning and therefore, the same require careful reading and interpretation.

13. Since the official language of the State is Hindi, therefore, for proper interpretation of respective clauses of

the Control Order 2015, the Hindi portion is taken note of, which provides as under:-

“16. दण्ड एवं शास्ति.— (1) केन्द्रीय/राज्य आदेश के किसी उपबंध अथवा इस आदेश के उल्लंघन की दशा में उचित मूल्य दुकान की प्राधिकार-पत्र को दुकान आबंटन प्राधिकारी द्वारा निलंबित या निरस्त किया जा सकेगा और प्रतिभूति की राशि पूर्णतः या अंशतः समपहृत की जा सकेगी। ऐसे मामले में समपहृत राशि संबंधित संस्था के दोषी कर्मचारी से वसूली योग्य होगी।

(2) किसी व्यक्ति के द्वारा मासिक आबंटन की 10 प्रतिशत से अधिक मात्रा के संबंध में खण्ड 13 के अधीन उल्लंघन अथवा इसी खण्ड के अधीन उल्लंघन की पुनरावृत्ति की दशा में उसके विरुद्ध आवश्यक वस्तु अधिनियम, 1955 (1955 का 10) की धारा 7 के अधीन अभियोजन की कार्यवाही अनिवार्य रूप से की जाएगी।

(3) किसी उचित मूल्य दुकान के निलंबन की दशा में उचित मूल्य दुकान आबंटन प्राधिकारी 10 दिवस की अवधि के भीतर संबंधित उचित मूल्य दुकान को कारण बताओ नोटिस जारी करेगा और यथासंभव तीन माह के भीतर अंतिम आदेश पारित करेगा।

(4) उचित मूल्य की दुकान आबंटन प्राधिकारी उचित मूल्य की दुकान को लिखित में अपना पक्ष प्रस्तुत करने के लिए युक्तियुक्त अवसर देने के पश्चात और प्राकृतिक न्याय के सिद्धान्तों का अनुसरण करते हुए उसके कारण का उल्लेख करते हुए दुकान का प्राधिकार पत्र निरस्त कर सकेगा :

परन्तु उचित मूल्य दुकान आबंटन प्राधिकारी अपील के अंतिम निराकरण तक किसी नई संस्था को उचित मूल्य की दुकान आबंटन नहीं करेगा।

(5) दुकान आबंटन प्राधिकारी उचित मूल्य की दुकान के निलंबन/निरस्ती के दौरान ऐसी दुकान से संलग्न उपभोक्ताओं को सामग्री का वितरण सुनिश्चित करने के लिए किसी निकटस्थ उचित मूल्य की दुकान से वैकल्पिक व्यवस्था करेगा:

परंतु किसी ग्रामीण क्षेत्र की किसी उचित मूल्य की दुकान को नगरीय क्षेत्र की उचित मूल्य की दुकान से अथवा किसी नगरीय क्षेत्र की उचित मूल्य की दुकान को ग्रामीण क्षेत्र की उचित मूल्य की दुकान में संलग्न नहीं किया जाएगा।

(6) यदि अधिकृत एजेंसी/उचित मूल्य के दुकानदार द्वारा किसी आवश्यक सामग्री का किसी अपात्र व्यक्ति को प्रदाय अथवा वितरण किया जाता है तो उसका मूल्य जिम्मेदार विक्रेता/कर्मचारी/व्यक्ति से तत्समय प्रचलित बाजार

मूल्य या इकोनामिक कॉस्ट (लागत मूल्य कम करने के पश्चात) जो भी ज्यादा हो से वसूल किया जाएगा। ऐसी राशि भू-राजस्व के बकाया के रूप में वसूली योग्य होगी।

(7) दुकान आबंटन प्राधिकारी, उचित मूल्य की दुकान के विक्रेता को, दोषी पाये जाने पर सार्वजनिक वितरण प्रणाली की सामग्री के वितरण के दायित्वों से पृथक करने का लिखित में, आदेश संस्था को दे सकेगा। ऐसा आदेश संस्था पर बाध्यकारी होगा तथा ऐसे विक्रेता को किसी अन्य उचित मूल्य की दुकान पर विक्रेता के रूप में नियुक्त नहीं किया जाएगा।

(8) किसी उचित मूल्य दुकान के संचालन में कोई अनियमितता पाए जाने पर यदि कलेक्टर की राय में यह समीचीन हो तो सोसाइटी के अध्यक्ष या प्रमुख/संस्था के विक्रेता/कर्मचारी के विरुद्ध अभियोजन की कार्यवाही आरंभ की जा सकेगी।

(9) यदि आंबटिती सहकारी सोसाइटी के विरुद्ध संबंधित उपायुक्त-सह-उप पंजीयक/सहायक आयुक्त-सह-सहायक पंजीयक द्वारा इस आदेश या सहकारिता अधिनियम के उपबंधों के अधीन कोई कार्यवाही अनुध्यात की गई है, तो वह तत्काल लिखित में उचित मूल्य की दुकान आबंटन प्राधिकारी को इसकी सूचना देगा।”

(emphasis supplied)

14. From bare perusal of sub-clause (3), it can be easily gathered that it contains two things first, to give an opportunity of hearing by giving show cause, meaning thereby compliance of principle of natural justice, second, the time limit, under which the authority has to proceed. Further, to make the provision understandable and easy to grasp. It can be divided in three parts, which is described as follows:-

The first part of sub-clause (3) i.e. “किसी उचित मूल्य दुकान के निलंबन की दशा में” gives meaning that in the existence of suspension order, the authority is under obligation to proceed further and to comply with the principle of natural

justice. It means the first part deals with the situation of existing the order of suspension, then second part “उचित मूल्य दुकान आबंटन प्राधिकारी 10 दिवस की अवधि के भीतर संबंधित उचित मूल्य दुकान को कारण बताओ नोटिस जारी करेगा” provides that the show cause notice has to be issued by the allotment authority to the fair price shop within a period of 10 days from the date of order of suspension and thereafter third part of the clause comes into operation which is as under “और यथासंभव तीन माह के भीतर अंतिम आदेश पारित करेगा” meaning thereby after giving show cause asking reply to said show cause, the authority has to pass a final order within a period of 3 months. The final order would mean the order of cancellation of authority letter.

15. The contention of the learned counsel for the petitioner is that before suspension, a show cause notice is required as per sub-clause (3) of Clause 16 of the Control Order 2015. But, I am not convinced with the same as that is not the proper interpretation of the clause and if his contention is accepted then it gives ambiguous meaning because the second part of sub-clause (3) does not make it clear as to from what date period of 10 days would start under which show cause notice has to be issued and then what would be the final order which is to be passed within a period of 3 months. In view of this Court, sub-clause (3)

deals the manner, in which, opportunity of hearing is to be provided and the period under which notice has to be issued. The period of show cause notice starts from the date of suspension. The authority within a period of 10 days from the date of suspension would issue show cause notice and would pass final order as far as possible within a period of 3 months though the final order has not been defined anywhere in the Control Order 2015 and also in the parent Act under which this Control Order has been made. But, in a general sense final order means the order of cancellation of authority letter of running the fair price shop.

16. Moreover, I am convinced with the contention of learned counsel for the respondents that sub-clause (4) is continuation of sub-clause (3) and it should not be read independently. If sub-clause (4) is seen, it deals with the requirement of following the principle of natural justice asking an opportunity to fair price shop to submit its stand in writing as show cause notice is issued under sub-clause (3), reply to the same in writing is required as per sub-clause (4) and considering the same final order would be passed as is required under sub-clause (4). It indicates like this “प्राकृतिक न्याय के सिद्धान्तों का अनुसरण करते हुए उसके कारण का उल्लेख करते हुए दुकान का प्राधिकार पत्र निरस्त कर सकेगा”. Sub-clause (4) does not provide any requirement to issue any further

notice and second opportunity of hearing, but it only elaborates the manner in which the principle of natural justice has to be followed before passing the final order.

17. The proviso attached to sub-clause (4) puts rider upon the authority that the shop in question in respect of which final order has been passed would not be allotted till the decision of appeal as against the final order an appeal is provided to the Collector under the Control Order 2015, as the Collector is the appellate authority.

18. In my opinion, not only sub-clause (3) and sub-clause (4) are continuation of each other, but sub-clause (5) is also connected with therewith because sub-clause (5) further provides the power of interim arrangement during the pendency of appeal as sub-clause (4) provides that the shop which is in question would not be allotted to any new shop/society and then as to in what manner the beneficiaries/cardholders would get the foodgrains. To avoid any inconvenience to the beneficiaries/cardholders, provision of interim arrangement has been made under sub-clause (5) which provides that the shop in question in respect of which final order has been passed should be attached to some nearby shop so as to avoid difficulty which may be suffered by the beneficiaries/cardholders.

19. Justice G.P. Singh, in his 14th Edition of

Principles of Statutory Interpretation has considered the golden rule of interpretation and has opined as under:-

“The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning”. (**Nokes v. Doncaster Amalgamated Collieries Ltd., (1940) AC 1014**). The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction”.

20. The Supreme Court in case of **Jugalkishore Saraf v. M/s.Raw Cotton Co. Ltd.**, reported in **AIR 1955 SC 376**, has opined as under:-

“(6) The first thing that strikes the reader is the sequence of events contemplated by this rule. It postulates, first, that a decree has been passed and, secondly, that that decree has been transferred (i) by assignment in writing or (ii) by operation of law. The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the

present case a literal construction of the rule leads to no apparent absurdity an, therefore, there can be no compelling reason for departing from that golden rule of construction.”

(emphasis supplied)

21. Further, the Supreme Court in case of **Raghunath Rai Bareja and another v. Punjab National Bank and others** reported in **(2007) 2 SCC 230**, has observed that the departure from the literal rules should be done only in very rare cases and ordinarily there should be judicial restraint in this connection.

22. Thus, in my opinion, the contention of the petitioner, in fact, gives ambiguous meaning of sub-clauses (3) and (4) of Clause 16 of the Control Order 2015. It is clear after literal reading of respective provisions that show cause notice is issued after passing the order of suspension that too within 10 days from the said order and thereafter proper reply in writing is called for to submit the stand and then final order is passed.

23. In the earlier round of litigation i.e. W.P. No.7505/2020, the High Court has considered the fact that the reply of show cause notice though submitted by the fair price shop, but the same was not considered by the authority and passed the order of suspension. According to the Co-ordinate Bench of this High Court, the principle of

natural justice was not followed. But the Court has not examined the vary aspect as to whether the requirement to issue show cause notice arises before suspension or after suspension and also other ancillary requirements as have been contemplated under sub-clauses (3) and (4) of Clause 16 of the Control Order 2015.

24. From perusal of the impugned order dated 30.05.2020 (Annexure-P/1) passed by the authority in the present case after remanding of the matter by the High Court vide order dated 22.05.2020 passed in W.P. No.7505/2020, the authority has considered the reply submitted by the petitioner in very elaborate manner and then passed the final order. Although, in my opinion, there is a procedural flaw because the authority is of the opinion that the show cause has to be issued before suspension and, therefore, it has been issued in the present case before suspension and thereafter considering the said reply not only the order of suspension has been passed but final order has also been passed.

25. If the provisions of sub-clauses (3) and (4) are seen, it is clear that the basic intention of the legislation was to provide proper opportunity of hearing before passing the final order and in the present case the said basic requirement of following the principle of natural justice has

been followed because the show cause notice was issued, detailed reply was also filed in writing by the petitioner, the same was considered by the authority and after its consideration, final order has been passed which is impugned in this petition.

26. Thus, in my opinion, no prejudice is caused to the petitioner by the impugned order and the action of the authority does not suffer from any violation of principle of natural justice. Accordingly, I do not find that exercising the jurisdiction of Article 226 of the Constitution of India, the impugned order can be interfered with.

27. So far as the ground of *mala fide* is concerned, I am convinced with the contentions raised by the learned counsel for the respondents that when the order of suspension was assailed, no such ground was raised before the High Court and, therefore, at this juncture, impugned order will not be tested on the ground of *mala fide*.

28. In view of the aforesaid considerations and observations, the petition has no substance as the impugned order does not suffer from any infirmity. The petition is accordingly, **dismissed**. No order as to costs.

(Sanjay Dwivedi)
Judge