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**(2013) 02 P&H CK 0252**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 11897 of 2012**

Sahil Medicos

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 08-02-2013

**Acts Referred:**

**Citation :** (2013) 02 P&H CK 0252

**Hon'ble Judges :** Rajiv Narain Raina, J

**Bench :** Single Bench

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## Judgement

Rajiv Narain Raina, J.—The petitioner held a licence dated 12.2.2009 for retail sale of drugs issued under Rule 61 of the Drugs & Cosmetics Rules, 1945 (for short "the Rules") issued by the State Drugs Controlling and Licensing Authority, Punjab, Chandigarh which was valid up to 22.1.2014. On the strength of this licence, the petitioner was engaged in retail sale of drugs at his shop at Jalandhar. The licence was cancelled under Rule 66(1) of the Rules vide order dated 19.2.2010 (P-2) by the 4th respondent, consequent upon inspection of the petitioner's shop on 27.10.2009 by the District Drugs Inspector, Jalandhar under The Drugs and Cosmetics Act, 1940. The reason cited was that the petitioner was not "keeping/showing" the purchase records of 9 types of drugs which were seized and placed in Form 16 during inspection. These seized drugs are said to contain one or more ingredients of narcotics drugs and psychotropic substances which are not permitted for stocking under the licence. A show-cause notice is alleged to have been issued to the petitioner on 29.12.2009 for contravention of conditions of licence and of Rules 65(3)(1), 65(4)(1), 65(4)(4) & 65(6) of the Rules. Consequently, the licence was cancelled with immediate effect and the petitioner was prohibited from doing further business.

2. Aggrieved by the order of the 4th respondent, the petitioner filed appeal before the Appellate Authority-cum-Managing Director, Punjab Health Systems Corporation. The principal ground of appeal, inter alia, was that the show-cause notice dated 29.12.2009 mentioned in the impugned order of cancellation dated

19.2.2010 (P-2) was not served on the appellant, and therefore, he had not been afforded an opportunity of being heard before passing of the adverse order of cancellation of licence. It was also stated that no recovery of any prohibited drug was effected from the shop of the appellant. In order to settle the issue raised, that is, non-receipt of show-cause notice, the appellate authority called for production of record/documentary evidence which could prove that the petitioner was issued a showcause notice. One Mr. Ajay Singla appearing for the Licensing Authority stated before the Appellate Authority that he could not produce any documentary evidence which could prove that the showcause notice was indeed served upon the appellant-firm, M/s Sahil Medicos, but he yet insisted that the show-cause notice was issued to the Firm. The Appellate Authority has recorded in the impugned order dated 30.4.2012 (P-4) while rejecting the appeal as follows:-

9.....Mr. Ajay Singla stated that he could not produce documentary evidence which could prove that the showcause notice was indeed served to the appellant Firm, M/s Sahil Medicos but he insisted that the show-cause notice was issued to the Firm. He stated that the letters were being dispatched through central dispatch and the receipt of the same could not be located in the office. When asked how such an important part of the case record be missing. Mr. Singla conceded that there could be some laxity in record maintenance. Mr. Kahlon insisted that the appellant was not given proper opportunity before canceling its license. He also quoted the judgment of North Bihar Agency and Others Vs. State of Bihar and Others, vide which when property opportunity was not given to the appellants before cancelling their licences, the initial as well as the appellate orders confirming the cancellation of the licenses were set aside.

## FINDINGS

10. I heard both the parties and arguments and counterarguments averred by them patiently. The contention of the appellant that he did not receive a show-cause notice served upon him as a result of which he could not submit any reply in his defence, cannot absolve the appellant of the charges levelled against him by the Stale Drugs Authority where 9 types of drugs which have the potential for misuse as intoxicants by the youth and are harmful for society. Merely contending that the appellant had not received the Show Cause Notice cannot bestow upon him the advantage of absolving him from serious offences laid at his door, to which he has no answer. The lives of citizens are put to risk due to unscrupulous activities by certain chemists. Therefore, after giving careful consideration and hearing the contention of the appellant firm through his counsel, I conclude that he has failed to justify his case fully and further no tangible ground for obtaining any relief has been made out.

11. The contentions of the appellant are without adequate merit. Hence the appeal is disallowed.

3. When the licensing authority conceded before the Appellate Authority that

there was no proof of service of show cause notice and there could be some laxity in maintenance of record then in absence of concrete proof of service of show-cause notice, the Appellate Authority ought not to have journeyed out to hold that even if the show-cause notice was not served, yet it would not absolve the appellant of the charges levelled against him by the State Drugs Authority and the petitioner-Firm could not have advantage of absolving him from serious offences laid at its door to which he had no answer.

4. On issuance of notice of motion, the Assistant Drugs Controller, Punjab has filed a counter-affidavit which is rather perfunctory and he relies mainly upon the order of the Appellate Authority and supports the decision taken by the State Drugs Authority in its impugned order dated 19.2.2010 (P-2) as legal and valid. No further evidence has been shown or specific averment made that the show-cause notice dated 29.12.2009 was in fact served on the petitioner-firm.

5. I have heard Mr. D.S. Pheruman, learned counsel for the petitioner and Mr. Ajaib Singh, learned Addl. A.G., Punjab.

6. Mr. Pheruman, learned counsel for the petitioner relies on the dicta laid down in North Bihar Agency and Others Vs. State of Bihar and Others, Agarwal Medical and General Stores Vs. The State of Madhya Pradesh and Others, and the decision of the learned Single Judge in M/s Aventis Pharma Limited v. The State of Jharkhand & Others, 2010 (5) RCR (Civil) 517 in support of his case on the question of effect of "no notice, no hearing. He further places reliance on the provisions of Rule 66 of the Rules itself which require issuance of show-cause notice of cancellation containing reasons before passing final order of cancellation of license. Rule 66 reads as follows:-

66. Cancellation and suspension of licences:-(1) The licensing authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons therefore, cancel a licence issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the licence or with any provisions of the Act or Rules thereunder.

7. The rule preserves the valuable right of adherence to the cherished principles of natural justice. In absence of proof of service of show-cause notice on the petitioner-firm, both the impugned orders in my view cannot be sustained. The reasoning adopted by the Appellate Authority to uphold the cancellation order is far from satisfactory measured in terms of acceptable legal reasoning. When the authorized representative of the Licensing Authority had clearly stated that he could not produce documentary evidence to prove that the show-cause notice was indeed served on the appellant-firm, there was no further occasion for the Appellate Authority to proceed further to decide the case on merits. At that stage, having found a serious flaw, the Appellate Authority ought to have stopped short and considered remitting the matter back to the stage where the

fault or fatal error was found apparent on the face of the record. This path is by now a cardinal and universal principle of the rule of law as explained succinctly by the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, justifying redoing of the matter in the presence of direct Rule 66 on the subject preserving the right of a licensee to be actually, physically and without doubt served with the show-cause notice giving him an opportunity to show-cause and explain why an order of cancellation should not be passed. A show cause notice is the first limb of the principles of natural justice which protects persons from being condemned unheard. The petitioner lost his valuable right to reply to the show-cause notice.

8. Therefore, without going into the merits of the case or expressing any opinion with respect to the result of the inspection or the charges levelled, the impugned appellate order dated 30.4.2012 (P-4) together with the impugned order dated 19.2.2010 (P-2) passed by the 4th respondent deserves to be nullified on the short ground of breach of principles of natural justice. Consequently, this petition is allowed. The impugned appellate order dated 30.4.2012 (P-4) together with the impugned order dated 19.2.2010 (P-2) passed by the 4th respondent are hereby quashed. The matter is remitted to the 4th respondent to re-do the exercise in conformity with Rule 66 of the Drugs & Cosmetics Rules, 1945 from the stage of service of show-cause notice. In view of the nature of this order, it would serve the ends of justice if the cancellation order is allowed to operate till the petitioner's decks are not cleared in the fresh exercise which is directed to be concluded within four months from receipt of this order failing which the license would stand revived automatically. This direction would to the mind of this Court balance out the rights of either side given that an illegal order of cancellation was passed three years ago behind the back of the petitioner paralyzing his business.