

(1981) 03 OHC CK 0014

In the Orissa High Court

Case No : Original Jurn. Case No. 16 of 1981

The Cure

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Drugs and Cosmetics Rules, 1945 — Rule 64(2)

Citation : AIR 1981 Ori 84 : (1981) 51 CLT 407

Hon'ble Judges : R.N. Misra, C.J;B.N. Misra, J

Bench : Division Bench

Advocate : P.C. Misra, S.P. Misra and S. Latiff, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—The petitioner firm, M/s. The Cure, secured Drug Licences Nos. CU 2255 WC and CU 2256 WC dated 27-9-1978 and carried on its business as a Druggist and Chemist in a rented premises at Mission Road, Cuttack belonging to the Urdu Library. The date of expiry of the aforesaid Drug Licences was 31-12-1979. The firm had begun its business as a partnership firm with three partners, but after voluntary retirement of two partners, one after the other in 1979 and 1980 respectively, the sole proprietor is carrying on that business in the name and style of the old licensee. His case is that the firm had applied for renewal of the drug licence, first on 31-3-1979, while the partnership firm comprised of three partners. The firm again applied for renewal of the licence on 31-8-1979, following the retirement of one of the partners from the partnership firm. After the firm became a proprietary concern, it made another application for renewal of the drug licence on 7-9-1980. The firm continues to carry on its business in the same premises being located in one out of the six shop rooms which have been rented out to different persons for different business purposes by the said Library. The shop room of the firm had been approved as a fit place for running of the drug shop and accordingly the licence had been issued to the

firm in 1978. It is stated that the relationship between the firm and its landlord, the library, became strained as the President of the library issued a notice to the firm on 24-9-1979, asking for delivery of vacant possession by 31-10-1979 on which date the tenancy was to expire. It is alleged that the President of the library harassed the petitioner-firm with threats of disconnection of electricity on account of which the petitioner-firm instituted Title Suit No. 170 of 1979 in the Civil Court wherein the petitioner-firm prayed for permanent injunction against the landlord. It is stated that an order of injunction was issued by the Civil Court. The President of the library soon instituted a proceeding u/s 7 of the Orissa House Rent Control Act asking for eviction of the petitioner-firm from the shop room and the said case, which has been registered as H. R. C. Case No. 69 of 1979, is pending disposal. In December, 1979, the Drugs Inspector (opposite party No. 4) inspected the premises of the firm and thereafter a notice was issued on 17-3-1980 asking the petitioner-firm to show cause why action should not be taken against it for violation of, the Drugs and Cosmetics Rules, 1945 (hereafter referred as the Rules) as per details given in the said notice -- vide annexure 1. The petitioner-firm did not give a reply to the aforesaid notice as, according to the Proprietor, Sk. Zaburul Islam, he was ill. On enquiry from the office of the licensing authority Sk. Islam learnt that the matter had been dropped. On 25-7-1980, the petitioner firm received another notice asking it to show cause why its licence should not be suspended or cancelled on account of violation of the provisions of the Rules as per details given in the notice -- vide annexure 2. The petitioner-firm submitted its show cause on 6-8-1980 -- vide annexure 3. On 22-7-1980, Sk. Islam met the Assistant Drugs Controller (opposite party No. 3) and the latter asked him to obtain a letter of consent from the landlord regarding the fact that tenancy was subsisting. The petitioner-firm informed the licensing authority that in view of the pending eviction proceedings and the civil suit between the firm and its landlord, it was not possible for it to obtain the consent of the landlord for continuance of its tenancy and further pointing out that the firm was continuing in the shop room as a tenant -- vide Annexure 4 dated 5-8-1980. It is alleged that on 5-9-1980, opposite party No. 3 visited the shop room of the firm and thereafter the petitioner received another notice dated 19-9-1980 asking it to show cause why its drug licence should not be suspended or cancelled on account of violation of the provisions of the Rules as per details given in the notice -- vide annexure 5. The petitioner-firm submitted its show cause -- vide Annexure 6. It is stated that on 24-9-1980, the petitioner-firm received the suspension order dated 19-9-1980 from opposite party No. 2 -- vide Annexure 7. The licence of the petitioner-firm was suspended for a period of seven days with effect from the date following the date of receipt of the order. Another suspension order was passed by opposite party No. 2 on 14-10-80 suspending the licence of the petitioner firm for a period of ten days with effect from the date following the date of receipt of the order. It is alleged that this order had not been duly delivered to the petitioner-firm which discovered its existence only on 9-11-1986. Finally the petitioner-firm received the order dated 1-11-1980 wherein opposite party No. 2 as the licensing

authority refused to grant renewal of licence in favour of the petitioner-firm on the ground that the firm was not a fit person to whom such a licence could be issued -- vide annexure 9. The petitioner-firm thereafter filed an appeal before the Government under Rule 66 (2) of the Rules, and the said appeal has been rejected by Government order dated 29-12-1980 -- vide Annexure 12. It is alleged in the writ petition that the licensing authority (opposite party No. 2) was biased against the petitioner and had joined hands with its landlord who was interested in evicting the petitioner-firm from the premises and that its application for renewal of drug licence has been rejected on extraneous considerations. In support of this allegation, the petitioner-firm relies on Annexures 10 and 11 Annexure 10 is a copy of the letter D/- 3-11" 1979 from the licensing authority to the President of the library wherein the licensing authority has stated that the renewal application of the petitioner-firm beyond 31-12-1979 would not be considered unless the firm produced a satisfactory consent letter from its landlord regarding occupation of the premises where the shop was functioning. Annexure 11 is a copy of the letter dated 3-12-1980, wherein the licensing authority informed the said President that the application for renewal filed by the petitioner-firm had been rejected and that against the said order of rejection, the petitioner-firm had preferred an appeal before the State Government, According to the petitioner, its application for renewal of the licence was rejected on account of bias, prejudice and in gross violation of the principles of natural justice. The order passed against the petitioner-firm is also challenged on the ground that it was based on misconception of law and facts. The petitioner-firm has prayed that the orders as per Annexures 7, 8, 9 and 10 should be quashed and the licence of the petitioner-firm should be directed to be renewed.

2. In his counter, the opposite party No. 2 Deputy Drugs Controller-the Licensing Authority, has denied the allegations made by the petitioner. According to the return, the licensing authority had rightly refused renewal in view of the past performance of the petitioner-firm ran account of which its licence had been suspended on three occasions and on account of failure of the petitioner-firm to produce the documents regarding its tenancy in respect of the premises. The allegations of mala fide are denied. It is stated that the President of the library had filed an application before opposite party No. 2 that the premises in which the medicine shop was situated was no longer held by the petitioner-firm as a tenant and that the petitioner-firm was in unauthorised occupation of the said premises. It is also stated that the letter from the President had no connection with the order ultimately passed by the licensing authority. The inspection of the shop premises by the Drugs Inspector has been justified in the return as having been done in accordance with the requirements of the statute and its rules. It is denied that the licensing authority (opposite party No. 2) or the Assistant Drugs Controller (opposite party No. 3) had given an assurance to the petitioner-firm at any time that the matter of show cause had been dropped. Opposite party No. 2 has accordingly prayed for dismissal of the writ petition.

3. Opposite party No. 1 in its counter has stated that the appeal filed by the petitioner-firm had been duly processed and placed before the Minister and that the appeal would be heard properly after due notice to the parties. It may be noted that the counters of the opposite parties had been filed in O. J. C. No. 1951 of 1980, while the appeal before the Government was pending and after disposal of O.J.C. No. 1951 of 1980, as not pressed the said counters have been accepted as counters of opposite parties in the present petition as requested. As already noted the appeal before the Government has been rejected by order dated 28-12-1980 -- vide Annexure 12.

4. In the present case, three show cause notices were issued by opposite party No. 2 to the petitioner-firm -- vide Annexure 1 dated 17-3-1980, Annexure 2 dated 25-7-1980 and Annexure 5 dated 19-9-1980. In these three notices, the petitioner has been asked to show cause why the licence may not be suspended for an appropriate period or cancelled on account of the alleged violations of the provisions of the Rules as per details given in the notices. The petitioner did not show cause to Annexure 1. Annexure 3 dated 6-8-1980 and Annexure 6 dated 13-10-1980, are the explanations of the petitioner to the show cause notices as per Annexures 2 and 5 respectively, Order dated 19-9-1980 (Annexure 7) relates to the show cause notice dated 17-3-1980 (Annexure 1). Opposite party No. 2 has noted that the petitioner-firm had failed to furnish any explanation and has ordered that the licence of the petitioner-firm should be suspended for a period of seven days with effect from the date following the date of receipt of the order. The order of opposite party No. 2 dated 14-10-1980 as per Annexure 8 relates to the show cause notices dated 25-7-1980 and 19-9-1980, Annexures 2 & 5 respectively, and after considering the explanations submitted by the petitioner, opposite party No. 2 has ordered that the licence of the petitioner-firm should be suspended for a period of ten days with effect from the date following the date of receipt of the order.

5. Annexure 9 dated 1-11-1980 is the order of opposite party No. 2 refusing to grant or issue certificate of renewal of licence to the petitioner-firm as opposite party No. 2 did not consider the petitioner-firm to be a fit person to whom licence should be issued under the Statute and Rule 64 of the Rules. The proviso to Rule 64 (2) is relevant and may be extracted :

"Provided that the licensing authority may refuse to grant or renew a licence to any applicant or licensee in respect of whom it is satisfied that by reason of his conviction of an offence under the Act or these rules, or the previous cancellation or suspension of any licence granted thereunder, he is not a fit person to whom a licence should be granted under this rule. Every such order shall be communicated to the licensee as soon as possible."

According to this proviso the licensing authority may refuse to grant or renew a licence if it is satisfied that by reason of his conviction of an offence under the Act or the Rules, or the previous cancellation or suspension of any licence granted thereunder, the applicant is not a fit person to whom a licence should be

granted. The proviso does not require the licensing, authority to give an opportunity to the licensee to show cause or to represent his case before the refusal to renew his licence, although under Sub-rule (3) of the said Rule at the appellate stage the State Government is bound to hold an inquiry and give the appellant-licensee an opportunity for representing his views in the matter before passing final orders in appeal. In this connection reference may be made to the following observations of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, :

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

The observations of Lord Denning M. R. in *R. v. Gaming Board* (1970) 2 WLR 1009, may be usefully quoted here:

"At one time it was said that the principles (of natural justice) only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge v. Baldwin* 1964 A. C 40. At another time it was said that the principles do not apply to the grant or revocation of licenses. That look is wrong. *Reg. v. Metropolitan Police Commissioner, Ex parte Parker* (1953) 1 WLR 1150 and *Nakkuda Ali v. Jayaratne* 1951 AC 66 are no longer authority for any such proposition."

The Supreme Court pointed out in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, :--

"Rules of natural justice are not embodied rules nor can they be elevated to the

position of fundamental rights. As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , "the aim of rules of natural justice is to secure justice or to put in negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice".

There is nothing in the Statute or the Rules made thereunder relevant to the matter of grant or renewal of licence from where it can be said that rules of natural justice have been expressly or by a necessary intendment kept out. As already indicated, when suspension is to be directed, show cause is contemplated which is one of the canons of natural justice. When the appeal is to be heard, a personal hearing is stipulated. Since there is no clear provision for restricting application of the rules of natural justice at that point, either expressly or by a necessary intendment, on the oft-indicated principle that "fundamentals of fair play require that concerned persons be given opportunity to represent their case" Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, the licensee should have been heard. Given a hearing it could place its case, which it advanced in the writ application, explaining away the circumstances in which the suspension had been ordered, and after knowing its stand it is quite possible that the licensing authority would not have chosen to utilise such conduct as a ground for refusal to renew. The Supreme Court pointed out that "Law leans in favour of natural justice when statutory interdict does not forbid it" : Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, We are inclined to agree with the counsel for the petitioner that denial of an opportunity of being heard in consonance with the principles of natural justice at the stage of refusal to grant renewal rendered the refusal a nullity.

6. Further in the said order dated 1-11-1980, Annexure 9, it is stated that the petitioner-firm had been asked first on 3-11-1979 and secondly on 28-3-1980 to produce a consent letter from its landlord regarding its tenancy. In its letter dated 5-8-1980 (Annexure 4) which was sent by the petitioner-firm to the licensing authority, the former explained that its tenancy was subsisting in law even after the expiry of the term since eviction proceedings were pending disposal before the Controller. In these circumstances, the licensing authority (opposite party No. 2) in the purported exercise of his powers under Rule 65-A of the Rules should have realised that what he was asking the petitioner to do was impossible of performance. When the landlord and the petitioner-firm were arraigned against each other before the Courts, how could the petitioner-firm

obtain a letter of consent from its landlord? In view of the clear assertion of the petitioner-firm that proceedings for its eviction were pending before the Controller, the only conclusion that the opposite party No. 2 should have drawn was that the petitioner was continuing as a statutory tenant in the licensed premises and that should have been enough for the purposes of the Rules.

7. Further the petitioner-firm has alleged that opposite party No. 2 was biased against it and his order refusing renewal of the licence is a mala fide one. It is true that allegations of mala fide are so commonly made that the Courts should carefully scrutinise such allegations before coming to any conclusion one way or the other. In this connection, reference may be made to the following observations of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, :--

"The Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual."

In the present case, the allegations of mala fide and bias have been denied by opposite party No. 2. However, on examining the records and the relevant departmental file, we find that the petitioner has good cause for apprehension of prejudice, bias and mala fides. Annexure 10 shows that while the application for renewal of the licence of the petitioner-firm was pending consideration, opposite party No. 2 wrote a letter to the President of the library informing him that the issue of the renewal certificate would not be considered unless the petitioner produced a consent letter from its landlord. What was the necessity of this communication to the President of the library who strictly speaking, had no locus standi before the licensing authority in the present matter? Annexure 11 is even worse. After the disposal of the renewal application, opposite party No. 2 went to the extent of writing to the President that the application for renewal had been rejected by him and that the petitioner had preferred an appeal to the State Government. What was the purpose of this letter? The only inference that can be drawn from Annexures 10 and 11 is that opposite party No. 2 allowed himself to be influenced by the President of the library to the prejudice of the petitioner on extraneous considerations. And that is not all. In paragraph 6 of the impugned order dated 1-11-1980 "(Annexure 9), it is stated that copies of documents were furnished to opposite party No. 2 by the President of the library and it appears that those had been taken into consideration by opposite party No. 2. How does the President of the library come into the picture, what right does he have to furnish documents adverse to the interest of the petitioner-firm, and how can these documents be considered by the opposite party No. 2 behind the back of the petitioner-firm? Neither the records nor the returns furnish satisfactory answers to these questions. We are, therefore, constrained to hold that opposite party No. 2 while being under a statutory duty to act fairly and justly allowed his

proceeding to be supplemental to the eviction proceeding between the landlord and the tenant by subjecting himself to the influence of the President of the library and acted with bias and prejudice against the petitioner. Annexures 10, 11 and paragraph 6 of the impugned order (Annexure 9) clearly indicates gross abuse of discretionary power by opposite party No. 2. The concept of the Rule of Law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. It must always be remembered that arriving at a just decision is the aim of both quasi-judicial as well as administrative enquiries.

For the reasons stated above, the order dated 1-11-1980 passed by opposite party No. 2 as per Annexure 9 must be quashed. There is no material before us to hold that the order of the Government in rejecting the appeal of the petitioner-firm is vitiated on grounds of bias and prejudice. However, when the order of the licensing authority, on the basis of which the appellate authority gave its decision, is being quashed, it is only just and proper that the appellate order must also be set aside. When the foundation goes, the edifice must also disappear with it. In the facts and circumstances of the case, we do not think it proper to substitute our own views on the merits of the application for renewal of licence of the petitioner-firm. The proper course to adopt would be to remit the case to opposite party No. 2 for a fair and proper decision in the matter.

8. Accordingly, the order dated 1-11-1980 passed by opposite party No. 2 --vide Annexure 9 and the order of the appellate authority dated 29-12-1980 --vide Annexure 12 are quashed. The case is remitted to opposite party No. 2 for fresh disposal in accordance with law with an open and fair mind. If on reconsideration of the whole matter, opposite party No. 2 proposes to take action under the proviso to Rule 64 (2) of the Rules he should call upon the petitioner-firm to show cause as to why the latter's application for renewal of its licence should not be refused and he should give an opportunity to the petitioner-firm to plead its case before taking a final decision in the matter and such decision should be quickly taken. We must add that while considering the application of the petitioner-firm for renewal of its licence, opposite party No. 2 shall proceed on the basis that the petitioner-firm is continuing as a tenant in the shop premises until evicted therefrom in due course of law and opposite party No. 2 should completely ignore the materials placed before him by the President of the library.

The petition is allowed with costs. Hearing fee is assessed at Rs. 200.00 (Rupees two hundred only).

R.N. Misra, C.J.

9. I agree.