
(2014) 11 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 15278 of 2014

V.S.K. Enterprises

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Income Tax Act, 1961 — Section 22, 44(4)

Citation : (2015) 2 PLJR 17

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Jitendra Prasad Singh, for the Appellant; Kanak Verma, for the Respondent

Final Decision : Disposed off

Judgement

Mihir Kumar Jha, J. Heard learned counsel for the parties as with regard to the following prayer made in this writ application:--

"1(a) To set aside the letter dated 20.8.2014 issued by Airport, Director by which it has been informed that the competent authority had decided to terminate the contract with immediate effect i.e. 20.8.2014 and take possession under lock and key.

(b) To direct the respondents to open the communication centre of the petitioner which has been closed forcefully on 20.8.2014 itself without following the due process of law."

Learned counsel for the petitioner has submitted that the petitioner somehow has been subjected to repeated harassing orders cancelling the allotment of running a communication centre within the airport premises at Patna. In this regard, he has submitted that the authorities of the Airport Authority of India had failed to justify their earlier order of cancellation of the allotment of communication centre to the petitioner vide an order dated 30.6.2014 which was quashed by this Court by an order dated 28.7.2014 and a similar nature of

punitive action has been taken against the petitioner by the impugned order dated 20.8.2014 and that too without complying the principle of natural justice.

2. Learned counsel explains that the violation of principle of natural justice is apparent both from perusal of the show-cause notice as annexed by the respondents in their counter affidavit as also the admitted fact that action against the petitioner was by way of seizing the premises allotted to the petitioner even before passing of the impugned order. He has in this regard made an effort to establish that when the show-cause notice was issued on 13.8.2014 and the petitioner had been given seven days time which could have expired only on 20th of August, 2014, the action on the part of the officials of the Airport Authority of India to take forceful possession of the premises allotted to the petitioner on 19th of August, 2014 and the impugned order of cancelling the allotment on 20th of August, 2014, would be obviously in violation of the principle of natural justice. He has also submitted that as the petitioner has a strong case on merit as well because the charges which have been leveled against the petitioner is wholly frivolous in nature and in no way can be said to be infringing the terms and conditions of the agreement.

3. Learned counsel for the respondent Airport Authority of India, on the other hand, has submitted that the petitioner has been hell bent in creating a controversy. In this regard, he has not only been made statement in the counter affidavit but has also produced as many as six letters sent to the petitioner by speed post, all of them were returned and has tried to explain that there was no alternative option but to give show-cause notice to the petitioner by the means of internet on its I.D. address communicated by the petitioner. He, therefore, has justified the notice issued by the Airport Authority to the petitioner on 13.8.2014 by way of being sent to the petitioner on internet.

4. He has further submitted that on 19.8.2014, a Committee was constituted to take possession of the premises of the petitioner and when no reply was received from the petitioner on 20.8.2014 which according to him was the 8th day computing it from 13.8.2014 as the day from which seven days time had to be reckoned, the impugned order was passed against the petitioner on 20.8.2014.

5. On merit, he has submitted that the impugned order of cancelling the contract would require no interference by this Court firstly because of arbitration clause in the agreement and secondly on account of violation of the terms and conditions of the agreement as with regard to providing service in the space of the Airport Authority of India allotted to the petitioner for running a communication center. In this regard, he has also relied on an enquiry report of the officials of the Airport Authority of India and the complaint of customer which would be dealt in this judgment on an appropriate place.

6. The facts giving rise to this writ application lie in a very narrow compass. Upon the tender notice issued by the Airport Authority of India for providing a space for running communication center at Jai Prakash Narayan International Airport,

Patna (outside a terminal building) in the month of January, 2014, the petitioner, being declared the highest bidder, was awarded contract on 26.2.2014 and a license was awarded to him for running the communication centre on 21.3.2014 on payment of Rs. 7,101/- per month apart from other charges. The petitioner in fact was also handed over the place for running such communication center with effect from 3.4.2014 and the communication center of the petitioner was inaugurated on 15.5.2014.

7. The petitioner however was immediately subjected to an allegation in respect of committing breach of the terms and conditions of the agreement vide a letter dated 15.5.2014 of the Director, Airport Authority, Patna stating that he was storing edible items not permissible within the ambit of the agreement and was asked to remove the stored edible items immediately.

8. The petitioner claims that despite his protest to the authorities of the Airport Authority of India that it was not violating the terms and conditions of the agreement was subjected to illegal action of withdrawing the electricity facility to his communication center by the authorities of the Airport Authority of India as a result whereof he had moved this Court in CWJC No. 9365 of 2014 assailing the aforementioned order dated 15.5.2014 by which it had been directed to remove the stored edible items.

9. The petitioner's aforesaid writ application, CWJC No. 9365 of 2014 was however disposed of by an order dated 29.5.2014 directing the authorities of the Airport Authority of India to dispose of the representation of the petitioner as against the order dated 15.5.2014 within a period of two weeks from the date of receipt of the aforementioned order.

10. The representation of the petitioner was disposed of by the order dated 30.6.2014 wherein it was held that the petitioner had committed the breach of contract as per Clauses 8 & 9 of the letter of award dated 21.3.2014 and, as such, the license of the petitioner was terminated with effect from 1.8.2014 with a cost of Rs. 1 lac as penalty.

11. The petitioner had assailed the aforesaid order dated 30.6.2014 once again in a second writ application CWJC No. 12564 of 2014 and this Court by its order dated 28.7.2014 had held that the cancellation of the licence of the petitioner was bad because no show-cause notice was issued in this regard to the petitioner.

12. It is only thereafter that the show-cause notice was said to be issued to the petitioner on 13.8.2014 directing it to file its show-cause reply against the proposed termination of the licence and the impugned order of seizure of the premise of the petitioner was passed on 19.8.2014 by the Director, Airport Authority, Patna followed by his order dated 20.8.2014 giving rise to the present writ application.

13. In the backdrop of the aforesaid factual scenario, the first and foremost question would whether the impugned order dated 20.8.2014 is in violation of

the principle of natural justice, inasmuch as, in the writ application the petitioner has projected a picture that it was given no such show-cause notice dated 13.8.2014 and the impugned order was passed without affording the petitioner an opportunity to file its show-cause reply and/or opportunity of hearing. As a matter of fact, the petitioner has not even enclosed either the copy of the show-cause notice dated 13.8.2014 or the text of the order passed by the Airport Authority of India dated 20.8.2014 and only the forwarding letter of the said order dated 20.8.2014 has been sought to be assailed in this writ application. Nonetheless, the respondents in their counter affidavit have produced all relevant materials including the show-cause notice and the reasoned order dated 20.8.2014 while seeking to defend the order passed on 19.8.2014 for seizure of the premises of the petitioner and followed by cancellation of license of the petitioner on 20.8.2014.

14. In this regard, it has to be also taken into account that Dr. Pankaj, learned counsel for the Airport Authority of India had produced six letters sent to the petitioner under speed post dated 24.5.2014, 21.7.2014, 19.8.2014, 22.8.2014 (two envelopes) and 29.8.2014 all of whom were returned unserved with an endorsement of the postal authorities of either "left out" or "not traceable" or the "address not found". This Court in fact has compared the address given in all these six sealed envelope whose photocopy has been retained in the records of this case from which it is absolutely clear that the petitioner's address given in this writ application in the cage column is exactly the same and, therefore, it would not be difficult for this Court to hold that the petitioner was avoiding the service of the letters being sent by the authorities of the Airport Authority of India.

15. As would be apparent from reading of the aforesaid show-cause notice, the petitioner was given an opportunity to explain the two charges against the petitioner, the first one being based on an enquiry report dated 12.8.2014 and the other based on a complaint of Sri Hasanprit Singh dated 27.7.2014. What is really significant to note here is that neither of the two documents, namely, inspection report dated 12.8.2014 nor even the copy of the complaint of Hasanprit Singh dated 27.7.2014 were enclosed with the show-cause notice. Thus, the show-cause notice issued by the authorities of the Airport Authority of India was incomplete.

16. By now, it is well settled that if a show-cause notice refers to any particular allegation based on a document, the same has to be necessarily supplied in order to give an effective opportunity of hearing by way of eliciting response in the form of a show-cause reply to the show-cause notice. This Court, therefore, will have no difficulty in holding that even if it be held that the show-cause notice was served on the petitioner through internet, the same being itself incomplete, in no way of the matter could have afforded an effective opportunity of filing a show-cause reply and/or opportunity of hearing.

17. This Court, will have however no difficulty in accepting the submission of the

learned counsel for the Airport Authority of India that in the backdrop of the earlier litigation and strained relationship between the petitioner and the officials of the Airport Authority of India at Patna, the refusal of six letters sent to the petitioner by speed post was a valid ground for serving the said show-cause notice by internet of the I.D. address of the petitioner.

18. The question however will still be as to whether such show-cause notice was valid show-cause notice in absence of the enquiry report dated 12.8.2014 and a complaint of Hasanprit Singh dated 27.7.2014. Learned counsel for the Airport Authority of India has fairly conceded that when the show-cause notice was sought to be served to the petitioner by way of its being visited on internet at the I.D. address of the petitioner, neither the inspection report nor the complaint of Hasanprit Singh were made part thereof as is also evidenced from reading of the show-cause notice already quoted above. In that view of the matter, while this Court would hold that service of notice to the petitioner on its I.D. address through internet is valid and justified but, then, the show-cause notice itself being incomplete, the petitioner was denied of an effective opportunity to file his show-cause reply as sought by the impugned show-cause notice dated 13.8.2014.

19. The second question and in fact more important one would be as to whether the authorities could have passed the impugned order dated 20.8.2014. As has been found, the show-cause notice was issued to the petitioner on 13.8.2014 and it was given a period of seven days to file its explanation. Since the show-cause notice was issued on 13.8.2014, that day had to be necessarily excluded which would mean that the period of seven days had to start running from 14.8.2014 and was to be completed only in the midnight of 20.8.2014. This aspect of the matter as with regard to computation of the period of time has been directly answered in a series of judgment of the Apex Court and this Court wherein it has been always consistently held that the date on which the show-cause notice is issued is to be excluded. Reference in this connection may be usefully made to the judgment of this Court in the case of Smt. Rambha Sinha Vs. The State of Bihar and Others--> wherein it was held as follows:--

"8. So far as Section 44(4) of the Act is concerned, same in emphatic terms provides for seven clear days notice of a special meeting. The question is what is the meaning of the expression "seven, clear days notice". Probably no question has more exercised the mind of Judges in former time than the question as to proper mode of computing time. The statute requiring that notice of grounds of appeal was to be given fourteen days at least before the first day of session, it was decided that fourteen days at least meant fourteen clear days. The expression "not being less than fifteen days" was considered to mean fifteen clear days. Here the Legislature itself has used the expression "seven clear days notice". In case I hold that one of the days is to be reckoned inclusive and the other exclusive I shall be held guilty of rendering the words used by the Legislature superfluous. It is sound principles of interpretation that the Legislature is deemed not to waste its words or to say anything in vain and the

Court while considering the provisions shall not lean towards a construction which renders the words used by the legislature redundant except for compelling reason. To brush aside words in a statute is not a sound principle of construction and effort has to be made to give meaning to each and every words used by the legislature. Here the legislature has used the words seven clear days notice and from that its intention is clear that the day on which the notice is sent and the day on which the meeting is held, have to be excluded for computing seven clear days. The Legislature in its wisdom has provided for seven clear days notice so as to enable the elected representatives to deliberate and defend the motion. Therefore, on first principle I am of the opinion that for computing seven clear days the day on which the notice is issued and the date of meeting shall be excluded.

9. I had the occasion to consider this question on first principle in the case of Arun Kumar Singh Vs. The State of Bihar and Others, wherein I have held as follows:--

"8. Having answered this, the next question which falls for determination is as to how the period of seven clear days notice is to be calculated. It is well settled that when a statute provides for stated period of notice to be given, this requirement must be met, otherwise the meeting will be invalid. In the present case, Section 44(4) of the Act had in no uncertain term provided for seven clear days notice which would obviously mean that the notice shall be exclusive of the day on which it is issued and of the meeting. Applying the aforesaid principle, I am of the opinion that the notice to hold the meeting is invalid in the eye of law as seven clear days was not given."

10. Further in the case of Nagendra Prasad Singh Vs. State of Bihar and Others, , I have held as follows:--

"6. Having appreciated the rival submissions, I find substance in the submission of Mr. Singh. The notice for holding the meeting on 30.9.2003 was issued on 23rd September, 2003. Thus seven clear days notice was not given to hold the meeting. This itself vitiates the notice. Consequently, the business transacted on 30th of September, 2003 is not in accordance with law. Resultantly the motion of no confidence passed against the petitioner is non-est in the eye of law, which cannot be allowed to stand."

The frequency with which this question is coming for adjudication before this Court, I decided to deal with this question in little detail and I have come to the conclusion that the long line of precedents also support the view which I have taken.

11. In re Railway Sleepers Supply Company, [1885(2) Chancery Division] it has been held as follows:--

"The Court considered its judgment, and then decided that one of the days was to be reckoned inclusive, and the other exclusive, but not being subsequently

satisfied with that decision, the matter was reconsidered; and the Court held that the words "not being less than fifteen days," meant fifteen all days or clear days. In *Young v. Higgon* (6 M. & W. 49) a calendar month's notice was required to be given, and the Court held that the first days must be excluded from the reckoning. Alderson, B., in his judgment said (1): "Where there is given, to a party a certain space of time to do some act, which space of time is included between two other acts, to be done by another person, both the days of doing those acts ought to be excluded, in order to ensure to him the whole of that space of time." In *Blunt v. Heslop* (8 Ad. & E. 577) which turned on 2 Geo. 2, c. 23, the statute which then related to solicitors, under which an attorney was not entitled to commence an action for his fees until the expiration of one month or more after he had delivered his bill, it was held that time was to be reckoned exclusively of the day on which the bill was delivered and the action brought; on the same principles as those which were stated in the case of *Young v. Higgon* (6 M. & W. 49). These cases are not, in my opinion, distinguishable from the case before me; which, as I have said, is that there must be an interval of not less than fourteen days. That means fourteen clear days; and as Little Date, J., said in *Reg v. Justices of Shropshire* (8 Ad. and E. 175), I do not see any distinction between "fourteen days" and "at least fourteen days". I must come therefore to the conclusion that resolution is bad."

12. In *re Hector Whaling Limited* (1936 Chancery Division 208), it has been held as follows:--

"I do not think there is any doubt about its meaning, and I propose to found my decision on *Rex v. Turner*, (1910)1 KB 346 and *Chambers v. Smith*, (12 M. and W. 2) and to decide that the phrase means twenty-one clear days exclusive of the day of service and exclusive of the day on which the meeting is to be held."

13. In *Shackleton on the Law and Practice of Meetings*, Ninth Edition, in paragraph 5-08 (8) it has been stated as follows:--

"(8) Length of notice:

"It is clear where the regulations provide for a stated period of notice to be given, this requirement must be met or the meeting will be invalid".

xx xx xx

"Under many regulations affecting the service of notices it is provided that "clear days" must be given, that is to say that the notice shall be exclusive of the day on which it is served, and of the meeting. It is established that, even in the absence of specific provision, "days" means clear days, since it has been held that the words "at least 14 days before the date" of a meeting means 14 clear days between the date of the advertisement or notice calling the meeting and the day of the meeting, and an interval of "not less than fourteen days" between two meetings, means an interval of 14 clear days, exclusive of the respective days of meeting."

14. A Division Bench of the Nagpur High Court had the occasion to consider this question in little detail in the case of Rambharoselal Gahoi v. State of Madhya Pradesh and Ors. AIR 1955 Nagpur 35 in which the meaning of the expression "clear days" has been explained and it has been unequivocally held that in case of use of such expression the two terminal days must be excluded. Relevant portion of the judgment reads as follows:--

"9. The rule of law is that when words such as so many "clear days" or so many days "at least" are used, the two terminal days must be excluded. This rule is summarized by Maxwell on the Interpretation of Statutes, 10th Edn., at page 351, in these words:--

"Again, when so many "clear days", or so many days "at least" are given to do an act, or not "less than" so many days are to intervene, both the terminal days are excluded from the computation. In other cases, it would seem, the rule is to exclude the first and include the last day".

This statement is based on many cases cited by Maxwell, but the learned author has not referred to Lord. Tenterden's Test which was approved and applied Lord Wensleaydale (then Parke N.) in Webb v. Fairmaner (1838)3 M & W 473 (C) and Young v. Higgon (1840)6 M & W 49 at p. 54 (D)."

15. A Division Bench of the Rajasthan High Court in the case of Anokhmal Bhurelal Vs. Chief Panchayat Officer, Rajasthan, Jaipur and Others, , had the occasion to consider the meaning of the expression "at least 7 days" which expression is synonymous with seven clear days and has held that in computing the period seven days clear interval is required. Relevant portion of the judgment reads as follows:--

"The answer to the question was therefore given in the negative and the notice was held to be invalid. The language of R. 4 is not similar to the language of S. 22 of the Income Tax Act. In R. 4 the language used is "at least seven days" before the date of election. The language of the provision of the statute that came up for consideration in (1838)8 Ad & E 173 (B) is very much similar to the language of R. 4 and the observation referred to above the learned Judges in that case may serve as of assistance in this case. "At least seven days before the date of election" clearly means that 7 days" period must intervene between the date of the announcement of the notice and the date of election. In other words "seven days" clear interval is required by the law to lapse between the date of the announcement of notice and the date of election. The general rule of law of the computation of time is that fractions of a day are not reckoned. Bose J. in Ramkrishna Bahau v. Shrawak Kisan, AIR 1944 Nag. 356 (K) observed that:--

"In the first place, it is accepted that the day on which the copies are applied for and the day on which they are delivered are both to be excluded. Why? Because the law takes no account of the fractions of a day."

"The learned Judge accepted the general rule of law that has been stated above.

Having regard to the said general rule of law the interval between the date of the publication and the date of election in the present case cannot be considered to be more than six days, because the act of announcement has to be considered as co-extensive in time with the day on which it was announced. The date of announcement in the present case is, as stated earlier, 14th of October, 1955, and the date of election is 21st of October, 1955. Excluding the date of announcement and the date of election the intervals comes to 6 days only."

The use of the expression "not less than ten days" in a statute was held to mean ten clear days and while interpreting the said provisions a Division Bench of the Punjab High Court in the case of Jai Bhagwan Sharma and Another Vs. Matu Ram Bhola Ram and Others, held that in a case in which the election programme was published on 29.7.1961 and the last date for making nomination was fixed for 8.8.1961 then only nine days intervened between the two dates which was not in conformity with the statutory rules providing for not less than ten days time. Relevant portion of the judgment reads as follows:--

".....It was held that fourteen clear days must elapse between the dates of service and that of return. It is, therefore, quite obvious that in the present case ten clear days had to intervene between the date of publication of the election programme and the first of the dates specified in it, namely, 29th July, 1961 and 8th August, 1961. Admittedly in this view of the matter there was a contravention of the mandatory provisions of the aforesaid rule."

16. In the case of The Pioneer Motors (Private) Ltd. Vs. The Municipal Council, Nagercoil, the Supreme Court has held that when the statute uses the expression "not more than so many days" both the terminal days have to be excluded and the number of days mentioned must be clear days. Here the statute itself has used the word seven clear days and, therefore, both the terminal days have to be excluded. Relevant passage from paragraph 8 of the judgment reads as follows:--

".... The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded. To put it in the language used by Maxwell on Interpretation of statutes, 10th Edition, p. 351:--

"When.... "not less than" so many days are to intervene, both the terminal days are excluded from the computation."

17. The aforesaid view has been reiterated by the Supreme Court in the case of Jai Charan Lal Vs. State of U.P. and Others, wherein it has been held as follows:--

"It is doubt true that where the expression is "not less than so many days" both the terminal days have to be excluded and the number of days mentioned must be clear days but the force of the words "not earlier than thirty days" is not the same. "Not earlier than thirty days" means that it should not be the 29th day, but there is nothing to show that the language excludes the 30th day from

computation. In other words, although October 26 had to be excluded the date on which the meeting was to be called need not be excluded provided by doing so one did not go in breach of the expression "not earlier than thirty days". The 25th of November was the 30th day counting from October 26 leaving out the initial day and, therefore, it cannot be described as earlier than thirty days. In other words, it was not earlier than thirty days from the date on which the notice under sub-s. (2) was delivered to the District Magistrate. This reading is also borne out by the other expression "not later than thirty-five days" which is used in the section. In this Court, H.H. Raja Harinder Singh Vs. S. Karnail Singh, , the expression "not later than 14 days" as used in R. 119 under the Representation of the People Act was held to mean the same thing as "within a period of fourteen days". In that expression the number of days, it was held, should not exceed the number fourteen. In the sub-section we are dealing with the number of days should not exceed thirty five days. On a parity of reasoning not earlier than thirty days would include the 30th day but not the 29th day because 29th day must be regarded as earlier than thirty days. If the provision were "not earlier than thirty days and not later than thirty days" it is obvious that only the 30th day could be meant. This proves that the fixing of the date of the meeting was, therefore, in accordance with law and we respectfully disapprove of the view taken in the Andhra Pradesh case."

18. The aforesaid discussion leads me to come to the same conclusion which I have reached in the case of Arun Kumar Singh (supra) on first principle that Section 44(4) of the Act which had in no uncertain term provided for seven clear days notice would mean that the notice shall be exclusive of the day on which it is issued and of the meeting."

20. Here also, when the notice was issued on 13th August and the petitioner was given seven days time to file his explanation. The period of seven days had to be provided which does not become available if the date of notice being 13th of August as the date of order cancelling the license of the petitioner is 20th August. As a matter of fact, the date of 13th August had to be excluded for computation of the period of seven days and if done so, the petitioner had time till 20th August to file its reply but, as noted above, the order itself was passed on 20th of August, 2014. Thus, there would be no difficulty for this Court in holding the impugned order to be bad as it was passed within a period in which the petitioner could have filed its show-cause reply.

21. Additionally, this Court would find even the action of the officials of the Airport Authority of India to be vindictive in the sense that if when the earlier order of cancellation of licence of the petitioner was quashed by this Court, it would mean that the petitioner was entitled to continue as a licensee till its license was again terminated. However, as noted above, the order of seizure of the premises of the petitioner given to him under the license was admittedly passed on 19.8.2014 even before terminating the license on 20.8.2014. This would only go to show the predetermined mind of the officials of the Airport

Authority of India who somehow seem to be hell bent to cancel the license of the petitioner. Such vindictive approach of the authority of the Airport Authority of India cannot be appreciated specially in the background of the two earlier writ applications filed by the petitioner, one of which was decided in its favour.

22. Let it be noted that on an earlier occasion, this Court in the order dated 28.7.2014 in CWJC No. 12564 of 2014 had gone into the merit of the charges which were then leveled against the petitioner in a conclusive manner as would be evident from the following extract of the aforesaid order:--

"It is not a matter of contest that a licence for running a communication centre within the airport premises was granted to the petitioner by the Airport Authority of India under the signature of the Incharge (Commercial) for and on behalf of Airport Director. Copy of the licence is placed at Annexure-4 to the writ petition and is valid for 3 years from the date of commencement. By its very nomenclature, the communication centre was to provide for internet facility, telephone facility, fax machine, printing and photocopying with further permission of selling of pre-paid cards for mobile telephones/land lines, provide cell phones on rent and renting of SIM Cards for mobile phones. The extent of operation of the communication centre is mentioned in the notice inviting tender a relevant extract whereof is placed at Annexure-1. The notice inviting tender while defining the area of operation, in clear terms also provided that such communication centre would have no provision for catering, food beverages etc. Liberty however, was granted to the communication centre to have a tie up with outlets having valid contract for running snack bar/restaurant/food beverage available within the airport premises. Some complaints having been received against the petitioner, a direction was issued by the Incharge (Commercial) vide letter dated 15.3.2014 requesting the petitioner to remove the edible items if any and if he so wanted to sale food items, he should tie up with any such outlets available within the airport premises in terms of the conditions stipulated in the notice inviting tenders. The notice is placed at Annexure-7. The petitioner by filing the representation on 16.5.2014 contested such directives. Following the conflict, the electrical connection of the petitioner was disconnected on 16.5.2014 and against which he represented on 17.5.2014 and which was followed by filing a writ petition before this Court bearing C.W.J.C. No. 9365 of 2014. In between these events a notice proposing termination of licence was also issued by the Airport Director on 19.5.2014, a copy whereof is enclosed with the counter affidavit. While issuing such notice of termination of licence and forfeiture of deposits, the petitioner was also informed that the electrical connection would be resumed soon after the removal of the edible items from the premises. The petitioner apparently followed the directives because vide letter dated 22.5.2014 of the Airport Director, the Power Supply was resumed and the petitioner was directed to proceed strictly in terms of the definition of a communication centre failing which he was informed that suitable action would be taken against him.

The matter thus stood resolved with the resumption of electrical energy and the Airport Director making it clear that for the continuation of the communication centre, the petitioner was to strictly abide by the terms and conditions of his licence. In fact no sooner the electrical energy in the premises was resumed, there lay no further occasion for the petitioner to pursue the writ petition before this Court bearing C.W.J.C. No. 9365 of 2014 but he not only pursued the matter rather did not even bother to inform this Court that his representation dated 17.5.2014 filed against the disconnection had since been disposed of on 22.5.2014. In absence of such information, the Bench disposed of the writ petition on 29.5.2014 requiring the Airport Director to dispose of the representation. The impugned order has been passed pursuant thereto.

I have heard learned counsel of the parties and I have perused the materials on record.

As can be seen from the sequence of events whatever irregularity that was existing within the premises of the communication centre stood removed as is manifest from the letter of the Airport Director himself dated 22.5.2014 enclosed at Annexure-2 series and it is thereupon that the electrical energy had been restored. Now there is nothing on record to show whether the alleged irregularity regarding sale of edible items within the communication centre persisted for there is no show cause notice in this regard. In fact the directives of the Airport Director as contained in his letter dated 15.5.2014 and 19.5.2014 stood complied as is reflected from the letter dated 22.5.2014 whereunder the Airport Director while directing for restoration of electrical energy cautioned the petitioner against any future lapses under threat of cancellation of licence. The records of the present proceedings does not contain any such notice regarding alleged violation the petitioner since after 22.5.2014 or that he continued to sale edible items even thereafter.

The factual events having been discussed by this Court hereinabove. the writ petition is fit to be allowed on a very short issue and which is that the impugned order of cancellation of licence has been passed without any foundational basis and without issuing any show cause notice. Learned counsel for the Airport Authority tried to impress upon this Court that a show cause notice indeed was issued on 19.5.2014 as contained in Annexure-R-2 series but the said show cause notice dated 19.5.2014 having been responded to by the petitioner, his exoneration is reflected from the subsequent letter dated 22.5.2014 also appended at Annexure-R-2 series whereunder Electrical Energy was restored and the petitioner was allowed to continue his business with clear direction for abiding by the condition of licence. Admittedly. there is no other show cause notice issued to the petitioner since after 22.5.2014 and the Airport Director in the garb of disposal of representation in purported compliance of the order of this Court passed in C.W.J.C. No. 9365 of 2014 could not have proceeded to cancel the licence of the petitioner without even bothering to issue a notice in this regard.

For the reasons aforementioned, the order passed by the Airport Director dated 24.6.2014 impugned at Annexure-12 cannot be upheld and is set aside. The writ petition is allowed."

(underlining for emphasis)

23. In the light of the aforesaid judgment of this Court dated 28.7.2014, it will not be difficult for me to hold that the Director of the Airport Authority, Patna had no reason much less any jurisdiction to pass an order for seizure of the business premises of the petitioner on 19.8.2014 even before taking the action in relation to terminate (sic) of license for which a show-cause notice was issued only on 13.8.2014 and the period of seven days for filing show-cause reply/explanation had not expired as on 19.8.2014.

24. Thus for the reasons indicated above the two impugned orders dated 19.8.2014 passed by the Director, Airport Authority, Patna as also his order dated 20.8.2014 cancelling the license of the petitioner even before expiry of seven days time to file explanation by the petitioner has to be held to be bad and unsustainable on the ground of violation of principle of natural justice.

25. Having held so that both the order of the Director of the Airport Authority, Patna of seizing the business premises of the petitioner dated 19.8.2014 and the impugned order of cancellation of license of the petitioner on 20.8.2014 are bad, this Court would not direct for immediate restoration of the premises under license to the petitioner because the same has been interfered only on account of violation of the principle of natural justice. It has to kept in mind that the petitioner has been allotted the business space in a sensitive place i.e. the Airport under the specified terms and conditions in the agreement. It has been given the work for providing facility to the general public by way of internet services and thus if there has been complaint against its functioning in complete breach of the terms and conditions of the license, no leniency can be shown specially when those two charges against the petitioner are yet to be explained by it.

26. In such circumstances, this Court would deem it expedient in the ends of justice to direct the petitioner to file its consolidated explanation/show-cause reply on or before 10.12.2014 whereafter the competent authority of the Airport Authority of India will pass a reasoned order on or before 31.12.2014. Let it be noted that the enquiry report dated 12.8.2014 and the complaint of Hasanpriti Singh dated 27.7.2014 have now already been supplied to the petitioner by way of its being enclosed in the counter affidavit filed by the officials of the Airport Authority of India in this case and, thus, there would be no impediment now in the way of the petitioner in filing an effective show-cause reply.

27. It is, however, made clear that in view of the background that this Court has found the action of passing the order for the seizure of the premises on 19.8.2014 by the Director, Airport Authority, Patna even before passing of the impugned order of cancellation of license of the petitioner on 2.8.2014, the

decision this time on the show-cause reply/explanation furnished by the petitioner will be taken by a higher authority above the Director, Airport Authority, Patna, inasmuch as, there seems to be an element of bias/ prejudice on the part of the Director, Airport Authority, Patna to have not only acted irrationally but in undue haste.

28. Thus, this Court would direct the Regional Executive Director, Eastern Region, Airport Authority of India, Kolkata to pass the final order on the explanation filed by the petitioner on or before 31.12.2014. It goes without saying that if the explanation filed by the petitioner would satisfy the Regional Executive Director of the Airport Authority of India, Kolkata, he will immediately direct for restoration of possession the premises i.e. space of communication center allotted to the petitioner under the license which was given for a period of three years. It is also made clear that if for any reason whatsoever a final decision is not taken on the explanation filed by the petitioner within the aforesaid period i.e. till 31.12.2014, the petitioner would be entitled to be restored its possession with effect from 1.1.2015.

29. Before parting with it needs to be clarified that if the license of the petitioner is terminated on account of violation of any specific terms and conditions of the agreement, the only remedy in that case to the petitioner either for claiming damages or otherwise would be only by way of availing the recourse to arbitration proceeding as contemplated under Clause 29, which reads as follows:--

"29. All disputes and differences arising out of or in any way touching or concerning this Agreement [except those the decision whereof is otherwise herein before expressly provided for or to which the Public Premises (Eviction of Unauthorized Occupants) Act and the rules framed thereunder which are now enforced or which may hereafter come into force are application], shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) set-up at the airports, for which a written application should be obtained from the party and the points clearly spelt out. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration & Conciliation Act, 1996 shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative. It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any Court of Law, on this account.

SPECIAL CLAUSE:--

(a) The case shall be referred to the sole Arbitrator by the Chairman/ Member of the Authority subject to the condition that the licensee shall have to deposit disputed amount with AAI as condition precedent before making reference to the

Arbitration for adjudication of dispute.

(b) Similarly, before making a reference to Disputed Resolution Committee, the Licensee will have to first deposit the disputed amount with AAI and the consent shall have to be obtained from the licensee for acceptance of the recommendations of the Dispute Resolution Committee.

(c) During the arbitral and dispute resolution proceedings, the licensee(s) shall continue to pay the full amount of licence fee/dues regularly as per the award/agreement and perform all covenants of the agreements.

(d) The REDs/APDs shall personally monitor and follow up for completion of the arbitration proceedings in a time bound manner in coordination of the concerned Lawyers/Solicitors and the learned Arbitrator and shall ensure that the related documents/details/rejoinder/statement etc. are furnished to the Ld. Arbitrator within the time frame giving by the Ld. Arbitrator.

(e) Wherever award is made in favour of AAI, it would be ensured by REDs/APDs that the matter is taken up vigorously for claiming and realizing the award amount by way of adjustment of the amount deposited with AAI by the party without prejudicial to other claims/interests payable by the party as admissible.

(f) Wherever the award is pronounced against AAI, it must be ensured that the appeal is filed within time limit prescribed under the Act and under no circumstances delay should occur as nonfiling of appeal/challenging the award would benefit the opposite party and jeopardize the AAI interest as a whole.

(g) The arbitration will be completed (including pronouncement of award) within 6 to 9 months. Arbitration "FEE" will be fixed as being done in case of engineering arbitrations.

(h) The list of panel of Retired Supreme Court/High Court Judges/Retd. PSU/ Govt. Executives will be prepared by ED Headquarters for each Region and shall be reviewed at regular intervals. The panel will be prepared in the beginning of the year and got approved from Chairman, AAI."

30. As would be evidenced, there is a self-contained mechanism of resolution of the dispute by way of arbitration and thus the petitioner being bound by terms and conditions of the agreement will be under obligation to raise any matter relating to its dispute concerning the licence in question in arbitration proceeding. With the aforementioned observation and direction, this application is disposed of.