in recording no finding in regard to service of notice upon the petitioners. In paragraph-4 of the writ petition, it is specifically stated that no notice was received by the petitioners in order to contest their claim, but the respondent No.2 without considering the material as well as the provision of law, ordered that the land purchased by the petitioners is barred by fragmentation as provided under Sections 167/168 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and has ordered that the said land be vested in favour of the State.

9. As no counter affidavit has been filed controverting the statement made in paragraph-4 of the writ petition, meaning thereby, it is admission of the respondents that prior to passing of the order, no notice was issued to the petitioners nor it was served upon them.

10. In view of the above, in the opinion of the Court there is no finding recorded in the order that how the notice was served upon the petitioners, the orders being illegal and ex-parte in nature, are liable to be set aside by this Court.

11. Accordingly, the order dated 31.3.1997, passed by the respondent No.2 and order dated 4.1.2001, passed by the respondent No.1 are quashed. The writ petition succeeds and is **allowed.**

12. The respondent No.2 is directed to pass a fresh order, recording reasons of service of notice upon the petitioners within a period of six months from the date of production of a certified copy of this order.

(2025) 5 ILRA 610
ORIGINAL JURISDICTION

CIVIL SIDE
DATED: LUCKNOW 30.05.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ C No. 1000337 of 2015

Mohd. Mustkeem ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Satish Kumar Sharma, Manjusa, Mohan Singh, Rupesh Kumar Gupta

Counsel for the Respondents:
C.S.C., Nishant Shukla

(A) Administrative Law - Fair Price Shop License - Cancellation of license and principles of natural justice - Essential Commodities Act, 1955 - Uttar Pradesh Schedule Essential Commodities Distribution Order, 2004 - Section 28(3) - Control Order, 2016 - Government Order dated 29.07.2004 - Doctrine of *audi alteram partem* - A fair price shop license is not a fundamental right under Article 19(1)(g) - Relationship between the State and a licensee is that of a principal and an agent - Inquiry for cancellation is summary in nature and requires adherence to the broad principles of natural justice, not a detailed, full-fledged inquiry akin to a departmental inquiry - State as principal may terminate agency contract subject to non-arbitrariness. (Para - 22, 28, 31, 44 to 47, 52, 53, 58)

A fair price shop licensee's license was initially cancelled by the Sub Divisional Magistrate - which was later set aside on appeal for being *ex parte* - After a remand, the license was again cancelled - subsequent appeal was dismissed - leading to the instant writ petition. **(Para - 2 to 14)**

HELD: - Adequate opportunity was granted to the petitioner, and there was no violation of the

principles of natural justice. Inquiry was summary in nature and did not require a full-fledged departmental-style hearing. Petitioner was merely a licensee and did not have a fundamental right. Court found no reason to interfere with the orders of the Sub Divisional Magistrate and the appellate authority. State being the principal has the right to terminate the contract. **(Para - 49,52,53,58,59)**

Petition dismissed. (E-7)

List of Cases cited:

1. Noor Jahan Vs St. of U.P. & ors., Writ Petition No.31272 (M/S) of 2017

2. Prem Narain Vs St. of U.P. & ors., Writ-C No.61612 of 2013

3. Shatrohan Lal Vs St. of U.P. & ors., Writ-C No.18768 of 2020

4. Rajneesh Kumar Tyagi Vs St. of U.P. & ors., C.M.W.P. No.30912 of 2009

5. Jagannath Upadhyaya Vs St. of U.P. & ors., Writ-C No.18135 of 2021

6. Ram Kumar Vs St. of U.P. & ors., (2023) 16, SCC 691

7. Smt. Meena Devi Vs St. of U.P. & ors., Writ-C No.58035 of 2017

8. Shankar Prasad Vs St. of U.P. & ors., 2021 SCC OnLine All 1852

9. Puran Singh Vs St. of U.P., 2010 2 UPLBEC 947

10. A. S. Motors Pvt. Ltd. Vs U.O.I., (2013) 10 SCC 114

(Delivered by Hon'ble Jaspreet Singh, J.)

1. The present dispute emanated in the year 2007 and it has a checkered background.

2. The petitioner was accorded a license on 19.11.2005 for distribution of essential commodities through a fair price shop in village Panchayat Dilawarpur, Tahsil Mohammadi, District Kheri.

3. On 15.10.2007, the Sub Divisional Magistrate Mohammadi Kheri noticing certain discrepancies regarding the distribution of essential commodities suspended the license of the petitioner and required him to show cause within a week as to why further proceedings may not be taken against the petitioner.

4. As per the suspension order cum show cause notice, it was alleged that the petitioner had lifted the requisite quota of the food and essential commodities for the month of October 2007 on 26.09.2007. However, it was alleged that the appointed supervising officer on 07.10.2007 submitted his report and informed that he had visited the fair price shop of the petitioner where he was not available nor there was the necessary stocks of the grains and essential commodities for distribution.

5. Acting upon the said report, the matter was enquired through the distribution inspector Mohammadi who submitted his report dated 11.10.2007 and confirmed that the petitioner did not have the necessary stocks for distribution of the grains and the essential commodities for the month of October 2007. It also reported that the petitioner was required to produce the necessary documents which could not be presented. Statements of certain beneficiaries which included persons having B.P.L. Cards (below poverty line) and 13 Antyodoya Card holders whose cards did not indicate any endorsement regarding distribution of the grain and essential commodities or its receiving. Certain cards holders gave their statements that they had received the essential

commodities but even their ration cards did not have the necessary endorsement and there were certain other card holders who stated that they have not received the grains and the essential commodities.

6. The Sub Divisional Magistrate, Kheri taking note of the fact that in pursuance of the show cause cum suspension notice dated 15.10.2007 the petitioner did not respond nor submitted any evidence or explanation hence by means of order dated 17.11.2007 it cancelled the license of the petitioner.

7. An important event occurred when the Sub Divisional Magistrate, Mohammadi Kheri on 22.01.2008 made a fresh allotment in favour of Smt. Anwari (who after intervention of the Apex Court was impleaded as private respondent no.4 in the instant petition.)

8. In the meantime, the petitioner being aggrieved against the order dated 17.11.2007 had preferred an appeal before the Commissioner, Lucknow Division in terms of Section 28(3) of the Uttar Pradesh Schedule Essential Commodities Distribution Order 2004. This appeal came to be allowed on 16.12.2013 holding that the order dated 17.11.2007 was ex parte and had been passed without affording reasonable opportunity to the petitioner. It further directed that the petitioner would submit his reply within one month and thereafter the Sub Divisional Magistrate concerned shall decide the matter afresh.

9. In furtherance of the aforesaid remand order, the petitioner furnished his reply, however, the Sub Divisional Magistrate, Mohammadi once again considering the reply did not find any reason to doffer from the earlier decision and for the reason as mentioned in the order dated 17.02.2014, he cancelled the license of the petitioner including the agreement entered between the petitioner and the State and also forfeited the security.

10. Once again the petitioner being aggrieved against the order dated 17.02.2014 preferred an appeal. While this appeal was admitted by the Additional Commissioner (Administration), Lucknow Division, but it did not entertain the request of the petitioner for grant of an interim relief. At this stage, the petitioner approached this Court by means of Writ Petition No.4248 (M/S) of 2014 (Mustakeem Vs. State of U.P. & others) wherein a Co-ordinate Bench of this Court by means of order dated 31.07.2014 granted limited protection to the petitioner that till his disposal of his appeal or for a period of six months whichever is earlier the operation of the order of the Sub Divisional Magistrate dated 17.02.2014 shall be kept in abeyance and supply of his essential commodities shall not be stopped.

11. Once the said order was passed by the High Court, the Sub Divisional Magistrate, Mohammadi taking note of the aforesaid permitted the petitioner to lift the quota vide order dated 19.08.2014. It also noticed that in light of the order passed by the High Court it was necessary to give due deference and the same was to be complied with, and since two licensee could not subsist, the other licensee namely Smt. Anwari cannot be permitted to lift the quota, hence her supplies were stopped.

12. At this stage, Smt. Anwari who had been granted a fresh allotment on 01.02.2008 and who had not been impleaded as a party in Writ Petition No.4248 (M/S) of 2014, she preferred

review petition bearing N0.631 of 2014 (in re: 4248 (M/S) of 2014). The Court concerned taking note of the submissions of Smt. Anwari entertained the review petition and noticed that the order dated 31.07.2014 was passed under some confusion and permitted the petitioner herein (Mohd. Mustakeem) to file his counter-affidavit to the review petition within two weeks. As an interim order, it was ordered by the Court that till the disposal of the review petition, the order dated 31.07.2014 will be kept in abeyance, and in case of compliance of the order dated 31.07.2014 the Sub Divisional Magistrate if passed any order restoring the supply of essential commodities to Mustakeem then that order too shall also be kept in abeyance.

13. As a consequence of the said order, the Sub Divisional Magistrate, Mohammadi Kheri passed a fresh order on 05.09.2014 staying its earlier order dated 19.08.2014 and stopped the supply to Mustakeem and restored the supplies in favour of Smt. Anwari.

14. In the aforesaid backdrop, once again the appeal preferred by the petitioner against the order of cancellation dated 17.02.2014 was considered on merits and vide order dated 31.01.2015 it was dismissed. The petitioner being aggrieved by the order dated 17.11.2007 and the order dated 31.01.2015 filed the instant writ petition.

15. At this stage, it will be relevant to mention that in the instant petition also the petitioner did not implead Smt. Anwari as a party. However, the counsel for Smt. Anwari was also heard who had sought the intervention but it did not find favour with the Court and ultimately vide judgment and order dated 21.01.2021 the writ petition was allowed and the order of cancellation of license was set aside and by the same order the license was restored and it was observed that any third party rights created shall not come in the way of the restoration of the allotment and supply of essential commodities to the petitioner i.e. Mohd. Mustakeem. In furtherance of the order passed by the High Court dated 21.01.2021 the Sub Divisional Magistrate vide its order dated 11.02.2021 restored the license of the petitioner and also cancelled the license of Smt. Anwari.

16. Now in the aforesaid situation, it was time for Smt. Anwari, whose license had been cancelled, to escalate the matter and she approached the Hon'ble Apex Court against the judgment of the High Court dated 21.01.2021. The Apex Court by means of order dated 05.04.2021 as an interim measure stayed the operation of the order passed by the High Court. The Sub Divisional Magistrate, Mohammadi Kheri once again taking note of the order passed by the Apex Court again restored the license and supplies to Smt. Anwari and stopped the same in respect of the present petitioner.

17. Considering the appeal of Smt. Anwari The Apex Court allowed the same vide judgment and order dated 26.11.2024 and after setting aside the order passed by the High Court dated 21.01.2021 remanded the matter to the High Court with a specific direction that the writ petition would stand revived. Smt. Anwari would be impleaded as respondent no.4 in the writ petition and she will have the liberty of filing her counter-affidavit within four weeks and the High Court was requested to provide adequate opportunity of hearing to the parties to place their respective versions

and whereafter the writ petition would be considered and be decided in accordance with law preferably within a period of four months. It also observed that the license issued in favour of Smt. Anwari to run fair price shop shall continue but would be subject to the result of the writ petition. The Apex Court also observed that all contentions on merit are kept open to be agitated by the parties before the High Court.

18. It is in the aforesaid backdrop that this matter was placed before this Court and vide its order dated 03.04.2025, 11.04.2025 and 07.05.2025 had been goaded the counsel for the parties to comply with the procedural requirement of impleading the respondent no.4 herein (Smt. Anwari), serving her and also granted time to furnish her version, so that this matter could be heard finally.

19. The Court has heard Shri Satish Kumar Shama, learned counsel for the petitioner, Shri Rahul Shukla, learned Additional Chief Standing Counsel for the State and Shri Shreyash Agarwal, learned counsel appearing for the private respondent no.4 who also filed his counter-affidavit placing his version on record which has also been considered by this Court.

20. Shri Sharma has structured his submissions on three pillars:-

(i) The petitioner was not given adequate opportunity to contest and to establish that the cancellation of the license was bad in law. The petitioner had filed a detailed reply but the same was not taken note of appropriately rather it was incorrectly observed that the documents furnished by the petitioner were not appropriate. The entire burden was placed on the petitioner whereas in order to rebut the case alleged against the petitioner his defence ought to have been considered which has not been done which has resulted sheer miscarriage of justice.

(ii) The petitioner had been handicapped in contesting the allegation levelled against him as the entire case set up by the State was based on an inspection report which was never furnished to the petitioner and in the absence thereof the petitioner could not give an adequate reply as he had no idea of what case he had to meet which has also resulted in miscarriage of justice and per se is in violation of principles of natural justice.

(iii) It is also urged that there has been a diversion in the allegations and the case initially set up by the State; inasmuch as new grounds were taken for which the petitioner ought to have been given an opportunity to respond and without providing such an opportunity the action of the authorities in relying upon the said new grounds also violated the principle of natural justice. The petitioner was not given an adequate opportunity to contest and cross examine such card holders whose statements were allegedly recorded by the authorities and moreover the petitioner had submitted affidavits of the very same persons who allegedly had given a statement to the authorities. In the affidavit given by the said persons it was stated that they were all illiterate. Their statements have been taken without informing them of their import and content and further that the petitioner herein was a scrupulous licensee and they had no complaint against him and his affidavits were also not considered which has also vitiated the decision making process as adopted by the respondent authorities. Thus for all the aforesaid reasons, the impugned order is bad and the writ petition deserves to be allowed.

21. In support of his submissions, the learned counsel for the petitioner has relied upon the decisions of this Court in ***Noor Jahan Vs. State of U.P. & others, Writ Petition No.31272 (M/S) of 2017, decided on 11.12.2014, Prem Narain Vs. State of U.P. & others, Writ-C No.61612 of 2013, decided on 11.12.2014, Shatrohan Lal Vs. State of U.P. & others, Writ-C No.18768 of 2020, decided on 2.4.2024, Rajneesh Kumar Tyagi Vs. State of U.P. & others, Civil Misc. Writ Petition No.30912 of 2009, decided on 19.01.2001 and Jagannath Upadhyaya Vs. State of U.P. & others, Writ-C No.18135 of 2021, decided on 14.02.2022.***

22. Shri Shukla, learned Additional Chief Standing Counsel for the State has urged that the petitioner is merely a licensee and he does not have any fundamental right to do the business of distribution of food grains and essential commodities. It is urged that the relationship between the State and the license holder is that of a principal and an agent. The State from time to time have issued the government orders to regulate the distribution of food grains and essential commodities and in order to take an action against an erring licensee the State has to comply with the principles of natural justice by affording him an adequate opportunity and once the same has been done, it cannot be said that the view taken by the authorities is against the principle of natural justice or is bad in the eyes of law.

23. It was also urged that the cancellation of license of the petitioner was done on 17.11.2007 and about 18 years have lapsed and for the last 18 years, it is respondent no.4 who has been distributing the essential commodities and food grains and nevertheless a licensee does not have any vested rights rather his right to continue is subject to the confidence and pleasure of the principal and in this case once the principal found certain discrepancies and it proceeded to take action which was done in accordance with law then in such circumstances neither the plea of violation of principle of natural justice can be taken and moreover it is primarily the decision making process which is under the scope of judicial review by this Court and not the merit of the decision itself. Thus, for the aforesaid reason, the writ petition deserves to be dismissed. In his support of his submission, he has relied upon a decision of the Apex Court in ***Ram Kumar Vs. State of Uttar Pradesh and others (2023) 16, SCC 691.***

24. Shri Shreyash Agarwal, learned counsel for the respondent no.4 has raised similar submissions as urged by Shri Shukla for the State and thus for the sake of brevity, the same is not duplicated herein. In support of his submission, he has relied upon a decision of this Court in ***Smt. Meena Devi Vs. State of U.P. and others, Writ-C No.58035 of 2017, decided on 30.07.2018.***

25. The Court has heard the learned counsel for the parties and also perused the material on record.

26. In light of the submissions of the respective parties, this Court is required to examine whether the petitioner has been deprived of an opportunity of hearing or not. An ancillary issue that further requires examination is whether not having provided an opportunity to cross examine or not being given an inspection report would also amount to depriving the petitioner of an opportunity to contest the proceedings and whether this aspect in

itself can be considered as a handicap that may vitiate the decision making process.

27. Where both the petitioner and the respondent no.4 are licensee. What is the scope of the right which is conferred through a license for distribution of food grains and essential commodities and whether such right can be contested vis-a-vis the rights of a subsequent allottee.

28. At the outset, it may be noticed that from the perusal of the decision cited by Shri Shreyash Agarwal in Smt. Meena Devi (supra), it would reveal that a Co-ordinate Bench of this Court after taking note of several decisions of this Court as well as the Apex Court noted that the privilege of license conferred for the distribution of grains and essential commodities is a merely right that can be taken away by the principal in case of irregularities in distribution. It also notices that by taking away such privilege or cancelling the license for some valid reason must be informed and some opportunity of hearing is required to be granted to be licensee. However, there is no fundamental right or any constitutional right to such a lincesee and once the aforesaid twin conditions are adhered to, and complied with the writ court is not required to interfere in such orders especially where the licensee has already availed the statutory right of appeal.

29. It will be appropriate at this stage to record that there was a divide between two sets of opinion regarding the scope of applicability of principle of natural justice in an inquiry conducted in cases relating to the distribution in cases where a license for distribution of essential commodities was cancelled. One view favoured a full fleged inquiry as contemplated which includes serving of notice, charge-sheet as well as informing the licensee of the date of hearing. The other view was that a licensee was not entitled to a detailed inquiry as he was merely a licensee and a licensee does not have any fundamental rights to carry on with the license.

30. This controversy between the two set of opinions rendered by the respective learned Single Judge of this Court was referred to a Larger Bench vide order dated 29.11.2019 passed in Writ Petition No.32679 (M/S) of 2019, ***Shankar Prasad Vs. State of U.P. & others, 2021 SCC OnLine All 1852.***

31. The Larger Bench (which had Justice Jaspreet Singh as a member) had the occasion to consider the aforesaid issue and after noticing the entire scheme of the Act which commenced from the Essential Commodities Act 1955, several Government Orders holding the field in this regard including Government Order issued from time to time regulating and supervising the distribution of grains and essential commodities, noticing the scope of applicability and the extent of applicability of natural justice the Court in paragraph 42 to 47 held as under:-

"42. The efforts made by the Government from time to time is clearly to establish an accepted procedure and manner in which the enquiries regarding suspension/cancellation of a fair price shop is to proceed. In the aforesaid context, it would be seem that the Full Bench in Puran Singh (supra) has clearly held that the fair price shop licenses are not akin to the right by doing business as protected under Article 19 (1)(g) of the Constitution of India and noticing the provisions of the

Government Order of July 2004 where there is an elaboration regarding issuance of a show cause notice which must contain the material and findings surfaced in the preliminary enquiry to enable the licensee to know the charge against him so that he can reply to the same which sufficient particularity. It also contemplates the conclusion of the enquiry within a period of one month and it is incumbent upon the competent authority to give its decision by a speaking order. It is in this context that the Full Bench used the word full fledged enquiry specifically relating to Clause 4 and 5 of the Government Order of July 2004.

43. The process of grant of opportunity of hearing and holding a fair and just enquiry is inbuilt in the provision of Government Order dated 29th of July, 2004. With the advent of the Government Order of October 2014 and December 2015 as noticed above. It further clarifies the position that the licensee must be made aware of the violation and irregularities which have been found, upon which it is proposed to move against the licensee, either for suspension or cancellation so that he can place his reply with sufficient particularity which must be decided by a speaking order and order-sheet of the proceeding is also to be maintained scrupulously to bring in transparency and fairness in the enquiry so held.

44. Rules of natural justice are not rigid or immutable rules and they are not to be applied in a straight-jacket formula rather these are rules which are flexible to meet the exigencies of a situation. The Apex Court in the case of A.S. Motors Private Limited v. Union of India and others, (2013) 10 SCC 114 in Paragraphs 7 and 8 in reference to cancellation of contract viz-a-viz violation of principles of natural justice has held as under:-

"7. It was argued on behalf of the appellant that the termination of the contract between the parties was legally bad not only because the principles of natural justice requiring a fair hearing to the appellant were not complied with but also because there was no real basis for the respondent Authority to hold that the appellant had committed any breach of the terms and conditions of the contract warranting its termination. We find no merit in either one of the contentions. The reasons are not far to see.

8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical

infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice."

45. At this stage, it will be relevant to notice that after the promulgation of the Control Order 2016, the matter is governed by the said control order which also notices the agreement which is signed between the parties i.e. the licensee and the State Government which partakes the nature of a statutory contract and is nothing but a contract of agency where the licensee conduct activities on behalf of the State, distributing food grains and in return is entitled to a commission and it is clearly a contract of agency, as known in law.

46. The requirement of entering into an agreement between licensee and the State is also provided in the Distribution Order of 2004. Thus, the position of a licensee remains that of an agent of the State who is appointed to carry out the functions as entrusted to him in terms of the Distribution Order of 2004 and now under the Control Order of 2016 and is governed by the said Control Order and the terms of the agreement. Accordingly, it cannot be said that the enquiry as required to be held against the licensee for suspension or cancellation is akin to a disciplinary enquiry which is against a government servant. Neither the agreement nor the Distribution Order of 2004 or the Control Order of 2016 envisage an elaborate enquiry nor the same can be claimed by the licensee.

47. Thus, we answer the reference as under:-

(i) It is held that the parameters for an enquiry to be conducted against the licensee for the irregularities committed by the licensee in terms of the Distribution of Essential Commodities is on broad principles of natural justice where the competent authority shall provide a show cause notice to the licensee indicating the violations and irregularities committed by the licensee with sufficient particularity to enable him to respond to the same and after affording an opportunity of hearing, the decision can be taken by the competent authority by a reasoned and a speaking order. The enquiry envisaged is summary in nature and does not entail a detailed hearing, akin to a departmental enquiry;

(ii) It is held that the words "full fledged enquiry" as used by the Full Bench of this Court in the decision of Puran Singh (supra) has to be read in context with paras 4 and 5 of the Government Order of July 2004 and the scheme therein which merely requires adherence to the principles of natural justice and does not provide for a detailed enquiry involving various stages and steps as are required to be met in disciplinary enquiry against a government servant. "

32. Having considered the aforesaid propositions laid down by the Larger Bench, it would reveal that action can be initiated against the licensee for the alleged irregularities committed by the licensee and such enquiry is to be done on the broad principles of natural justice where the authority is required to issue a show cause notice to the licensee indicating with sufficient particularity the grounds and complaint received against him so that he can respond knowing well what case he has to meet. The inquiry envisaged is of summary nature and does not entails a detailed enquiry.

33. It is in this context, this Court finds that in the instant case, the order of cancellation against the petitioner was

passed in two stages; (i) the cancellation order came to be passed on 17.11.2007, however, the same was set aside in appeal by means of an order dated 16.12.2013 after holding that the petitioner was not afforded a reasonable opportunity and it was practically ex parte thus after the appeal was allowed (ii) Thereafter the petitioner submitted his detailed reply and the same was duly considered and the license again came to be cancelled on 17.02.2014 and the agreement entered between the petitioner and the State was also cancelled. The petitioner availed his right of appeal against the order dated 17.02.2014 which also came to be dismissed on 31.01.2015 affirming the order dated 17.02.2014.

34. The submission of the learned counsel for the petitioner that he was not provided with the copy of the inspection report and he was handicapped in contesting the proceedings as he was not aware of the case he had to meet. This submission does not impress this Court for the reason that it has not been specifically pleaded in the writ petition or even in the rejoinder-affidavit that the petitioner suffered any prejudice for not being provided with the copy of the inquiry report. No material has been brought on record to indicate that at any point of time i.e. from the commencement, by issuance show cause notice dated 15.10.2007 till passing of the order by the appellate authority on 31.01.2015 i.e. for about 8 years the petitioner had made any effort or filed any application to any authority seeking such a document.

35. It is to be noticed that this writ petition arises out of the second round of litigation. In the first round as already noticed in the preceding paragraph that the order of cancellation was set aside as it was found to be ex parte and that the opportunity of hearing was not granted to the petitioner. Once the petitioner had furnished his detailed reply, which was taken note of and the order of cancellation was passed which was affirmed in appeal. Now at this stage, it is not open for the petitioner to make submissions that he was deprived and handicapped in contesting the proceedings for want of inspection report especially when the petitioner could not establish that he had made any attempt to seek the said document nor a ground to the aforesaid effect was taken in this writ petition or even in appeal. Hence this submissions is turned down.

36. The submission of the learned counsel for the petitioner that he was not granted an opportunity to cross examine the persons who allegedly had given statement to the authority against the petitioner. This submission also pales into insignificance as the petitioner could not demonstrate that he had moved any application or made any request to the Sub Divisional Magistrate concerned or before any authority that he wanted to cross examine any witness who had allegedly made a statement against the petitioner.

37. It also could not be indicated what was the discrepancy and what was the gravity of such discrepancy, which necessitated the petitioner to cross examine such a complainant. It will be relevant to notice that when the cancellation of the license took place in the yea r 2007 at the relevant time the Government Order 2004 was in operation. The Government Order dated 29.07.2004 provided for a procedure relating to suspension and cancellation of the license of a fair price shop and relevant

clauses 2 to 7 are important which reads as under:-

"2. उक्त पृष्ठभूमि में मुझे यह कहने का निदेश हुआ है कि ग्रामीण एवं शहरी क्षेत्रों की उचित दर की दुकानों के निलम्बन/निरस्तीकरण के सम्बन्ध में निम्न प्रकिया का पालन किया जाए।

;पद्ध उचित दर की दुकान का निलम्बन मात्र किसी व्यक्ति की शिकायत के आधार पर नहीं किया जाये। यदि किसी दुकानदान के विरूद्ध किसी स्रोत से शिकायत प्राप्त होती है तो पहले उसकी प्रारम्भिक जॉच करायी जाये। यदि प्रारम्भिक जॉच में दुकानदार के विरूद्ध ऐसी गम्भीर अनियमितताएं प्रथम दृष्टया सिद्ध हो रहीं हों जिनके आधार पर दुकानदार की दुकान निरस्त होने की सम्भावना हो तभी दुकान को निलम्बित किया जाये और साथ ही साथ दुकानदार को कारण बताओ नोटिस जारी किया जाये कि उसकी दुकान क्यों न निरस्त कर दी जाये। यदि प्रारम्भिक जॉच में पाया जाये कि अनियमितता इतनी गम्भीर नहीं है कि दुकान के निरस्तीकरण की सम्भावना हो तो केवल कारण बताओ नोटिस जारी किया जाये। निलम्बन आदेश/ कारण बताओ नोटिस एक ''स्पीकिंग आर्डर'' होना चाहिए तथा उसमें प्रारम्भिक जॉच में पायी गयी उन सभी अनियमितताओं का विवरण होना चाहिए जिनका उत्तर दुकानदान से अपेक्षित हो।

;पपद्ध (क) खाद्य विभाग के अधिकारियों/ जिला प्रशासन के अधिकारियों/ अन्य प्राधिकृत व्यक्तियों द्वारा उचित दर की दुकान के आकस्मिक निरीक्षण के दौरान यदि पाया जाता है कि दुकानदार द्वारा कोई गम्भीर अनियमितता की गयी है तो भी दुकान को नियुक्ति अधिकारी द्वारा अपने विवेक का प्रयोग करते हुए निलम्बित किया जा सकता है।

(ख) खाद्य विभाग के अधिकारियों/ जिला प्रशासन के अधिकारियों/ अन्य प्राधिकृत व्यक्तियों द्वारा यदि दुकानदार कोई अनियमित कार्य, वितरण में गड़बड़ी या अनुसूचित वस्तुओं की कालाबाजारी करते हुए पकड़ा जाता है तो भी नियुक्ति अधिकारी द्वारा अपने विवेक का प्रयोग करते हुए दुकान को निलम्बित किया जा सकता है।

उक्त परिस्थितियों में दुकान के निलम्बन की स्थिति में भी ''स्पीकिंग आर्डर'' से निलम्बन आदेश जारी किया जायेगा जिसमें सभी अनियमितताओं का उल्लेख होगा तथा दुकानदार को कारण बताओ नोटिस जारी किया जायेग कि क्यों न उसकी दुकान निरस्त कर दी जाये।

3. उक्त प्रकार से यदि उचित दर की कोई दुकान निलम्बित की जाती है तो उसका सम्बद्धीकरण गांव/ शहर की (जैसी भी स्थिति हो) सबसे निकट की उचित दर की दुकान से किया जायेगा। किसी भी एक दुकान से अधिकतम एक ही निलम्बित दुकान का सम्बद्धीकरण किया जा सकता है और किसी भी परिस्थिति में एक दुकान से एक से अधिक निलम्बित दुकान का सम्बद्धीकरण नहीं किया जायेगा।

4. निलम्बित की गयी दुकान के विरूद्ध जॉच की कार्यवाही अधिकतम एक माह में अनिवार्य रूप से पूरी की जायेगी तथा जॉच में सम्बन्धित दुकानदार को सुनवाई का पूरा मौका दिया जायेगा। सम्बन्धित दुकानदार का यह दायित्व होगा कि वह जॉच में अपना पूरा सहयोग दे ताकि जॉच का कार्य जल्दी से जल्दी पूरा किया जा सके तथा नियुक्ति प्राधिकारी द्वारा प्रकरण में गुण–दोष के आधार पर अन्तिम निर्णय लिया जा सके। यदि दुकानदार द्वारा जॉच में सहयोग नही दिया जा रहा हो और जॉच में विलम्ब करने का प्रयास किया जा रहा हो तो दुकानदार को इस आशय का भी नोटिस जारी किया जायेगा और अपना पक्ष रखने का अन्तिम अवसर प्रदान किया जायेगा।

5. जॉच की कार्यवाही अधिकतम एक माह में पूर्ण करके नियुक्ति प्राधिकारी द्वारा प्रकरण में अन्तिम निर्णय लिया जायेगा और गुण–दोष के आधार पर एक ''स्पीकिंग आर्डर'' जारी किया जायेगा। इस आदेश में यह स्पष्ट उल्लेख होना चाहिए कि सम्बन्धित दुकानदार को सुनवाई का अवसर दिया गया और उसे सुना गया। यदि दुकानदार ने जॉच में सहयोग नहीं किया हो और सुनवाई के अवसर का जानबूझकर उपयोग न किया हो तो अन्तिम आदेश में इस बात का भी पूरा उल्लेख होना चाहिए कि दुकानदार को अवसर प्रदान किया गया तथा अन्तिम नोटिस दिया गया परन्तु उसने जानबूझकर अवसर का उपयोग किया और जॉच में सहयोग नहीं किया।

6. जॉच की कार्यवाही के उपरान्त दुकानदार के दोष की गम्भीरता देखते हुए उसे दण्ड दिया जाये। यदि दण्ड स्वरूप दुकानदार की निलम्बित दुकान निरस्त की जाती है जो निरस्तीकरण आदेश की तिथि से अधिकतम एक माह के अन्तर्गत नये उचित दर के दुकानदार की नियुक्ति अनिवार्य रूप से हो जानी चाहिए ताकि दुकान की सम्बद्धता जल्दी से जल्दी समाप्त हो सके।

7. नियुक्ति प्राधिकारी उपरोक्त आदेशों का कड़ाई से पालन करेंगे और कार्यवाही के लिए ऊपर दी गयी समय सारिणी को सुनिश्चित करेंगे। समय सारिणी के अनुसार जॉच की कार्यवाही एक माह में तथा दुकान के निरस्तीकरण की स्थिति में एक और माह नयी नियुक्ति के लिए निर्धारित है। अतः निलम्बित/ निरस्त दुकान का किसी अन्य दुकान से सम्बद्धीकरण अधिकतम दो माह के लिए होगा।"

38. This was also noticed by the Larger Bench in Shanker Prasad (supra)

and in paragraph 31 to 35, it was noticed as under:-

"31From the perusal of the Government Order of July 2004, it indicates that the suspension of a fair price shop license will not be done merely on a complaint by a person rather it provides that in case if any complaint is received from any source then first a preliminary enquiry be held. In case if during the preliminary enquiry certain serious violations and irregularities came to the fore which prima facie may give rise to such grounds which may possibly lead to cancellation of the license, if established, then the license can be suspended and simultaneously the fair price shop owner shall be issued with a show cause notice as to why his license may not be cancelled. In case, in the preliminary enquiry the violations are not found to be serious then merely a show cause notice can be issued. However, the suspension order/a show cause notice must be passed with a speaking order and must also mention and refer to all such irregularities and violations which have been noticed in the preliminary enquiry to enable the fair price shop owner to respond with particularity.

32. Clause 4 of the Government Order of July 2004 also provides that the enquiry in respect of suspended fair price shop must be completed within a period of one month after affording full opportunity of hearing to the licensee concerned. It also envisages that the licensee is under responsibility to co-operate in the early hearing and conclusion of the enquiry and in case the licensee does not co-operate or attempts to delay then he can also be issued with a notice to the aforesaid effect by requiring him to furnish his reply as a last opportunity. The competent authority is required to conclude the enquiry within a period of one month and to give his decision by a speaking order.

33. At this stage, it will be relevant to notice that the aforesaid Government Order of July 2004 came up for consideration before a Full Bench of this Court in Puran Singh and others Vs. State of U.P. and others (2010) 2 UPLBEC 947. The Full Bench was required to answer the question before it: (i) whether before suspension of fair price agreement an opportunity of hearing is mandatory to be given to the fair price shop agent in violation of which the suspension order is liable to be set aside? (ii) Whether the Division Bench Judgment in 2007 (1) ALJ 407 Pramod Kumar Vs. State of U.P. and others and 2008 (4) ALJ 10 Har Pal Vs. State of U.P. and others lay down the correct law that opportunity is must or whether the Division Bench in Gopi's case lays down the correct law.

34. In the aforesaid backdrop the Full Bench noticed that the Distribution Order of 2004 so also the Government Order dated 29th of July, 2004 and in para 50 of the said judgment, it answered the question in the negative as already noticed in the former part of this opinion.

35. From the perusal of the decision of the Full Bench it is evident that it is not mandatory to give an opportunity of hearing before an order of suspension of licensee is passed nor does its violation affect the validity of the suspension order simplicitor on the ground of having been passed without granting an opportunity of hearing. It also held that the Division Bench Judgment of Pramod Kumar (supra) and Harpal (supra) does not lay down the correct law."

39. Thus from the above, it would reveal that the petitioner as a matter of right did not have any right to cross examine the

complainant, however, in the instant case, there is no material to indicate that the petitioner had made such a claim before the authority and in absence of the same this issue is not permissible to be raised by the petitioner especially where the scope of the inquiry has been held to be of summary in nature and as explained by the Larger Bench in Shankar Prasad (supra), hence this contention of not being provided with an opportunity to cross examine as raised by the counsel for the petitioner fails.

40. The other submission of the learned counsel for the petitioner that the material, reply and documents furnished by the petitioner were not taken note of and adequately considered by the Sub Divisional Magistrate as well as the appellate authority also does not find favour with this Court.

41. The record would indicate that alongwith his reply the petitioner had furnished certain affidavits of persons whose statements were allegedly recorded by the authorities to base its decision of cancellation. The same has been brought on record by the petitioner alongwith his rejoinder-affidavit dated 27.04.2015. From the perusal of the aforesaid documents which are annexure no.R.A.5 would reveal that all the affidavits have been prepared on one day and the persons who have sworn the affidavit have made practically the same assertion and the same language and perhaps the inner consciousness of all these persons also awakened on one particular date itself i.e. 02.01.2008.

42. The petitioner alongwith his rejoinder-affidavit has also brought on record the copies of the card issued to the petitioner as annexure no.R.A.3 with the writ petition. It would reveal that the said card was valid till 31.12.2007. From the perusal of the said card, it would indicate that the inventory for the month of September 2007 was lifted. It also indicates that the food grains and the essential commodities which was to be distributed for October 2007 had been lifted by the petitioner on 26.09.2007. It indicates that BPL wheat of 21q., BPL rice 52.50 q., sugar 10 q. other than that, wheat of 14.50 q. and rice 36.25 q. was lifted.

43. In contrast, the other documents which have been produced relates to August 2014 but nevertheless it could not be clearly established as to the fact that once the necessary quota which was to be distributed in the month of October 2007 and which had been lifted on 26.09.2007 but was not found at the premises of the fair price shop. The affidavits which have been relied upon by the petitioner also give a different picture; inasmuch as they were all filed on one day in almost similar language and all such persons have stated on affidavits that they have no complaint against the licensee. Some stated that they have not taken their monthly quota for the month of October 2007 and a few have stated that the allegations made against the petitioner are false but what could not be explained or demonstrated before this Court was that in the show cause notice issued to the petitioner, there were clear averment that the stocks which had been lifted by the petitioner on 26.09.2007 which was to be distributed in the month of October 2007, hence in what circumstances, when the inspection was made, the stocks were not found at the fair price shop.

44. This could have easily been corroborated by the physical presence of the stock at the shop/go-down and it could

also be indicated regarding the distribution of the said stocks to card holders i.e. the beneficiaries. Every time any card holder is given the grains and essential commodities, an endorsement is made on his card. In absence of any clear averments and endorsement on the card and giving no explanation regarding non presence of the stocks or any explanation thereto cannot be said that the documents were not appropriately considered and discarded by the authorities.

45. It is not disputed that the petitioner had lifted the stock on 26.09.2007 and the said items were to be distributed to the beneficiaries in October 2007. In such circumstances, the allegation that such stocks were not present could have been clearly established but it was not done. The authority concerned has taken note of the fact that the documents in the explanation which were furnished by the petitioner were not cogent; inasmuch as the certain cards which were furnished only mentioned the month September/October without the year. The signatures of the members of the vigilance/administrative committee were also not present. The alleged signatures of the Gram Pradhan pointed out by the petitioner before the authority also did not have any date written against it.

46. It also noticed that the petitioner was required to furnish the stock register for the month of October 2007 which was not done. It also noticed that the photocopy of the ration cards as submitted by the petitioner did not indicate what quantity was given to the said beneficiaries. The details regarding the distribution of kerosene oil were also not mentioned. It is taking note of the aforesaid that the finding was recorded that the documents furnished by the petitioner did not inspire confidence in context with the nature of the allegation levelled against him and for the said reasons license was cancelled.

47. This Court considering the aforesaid is satisfied that the authorities have taken a view based on the material submitted by the petitioner and the documents also submitted by him were noticed while taking a decision.

48. Learned counsel for the petitioner could not demonstrate which particular document were filed by him and were ignored or that if any such document was furnished by him and had the same been taken note of, it could clearly change the entire complexion of the case and would result in a finding in favour of the petitioner.

49. This Court has also taken note of the appellate order dated 31.01.2015 which also states that all the documents submitted by the petitioner were taken note of and he was granted reasonable opportunity of hearing and after considering the submissions made by the counsel for the petitioner before the appellate authority, the order impugned dated 31.01.2015 was passed.

50. Learned counsel for the petitioner could not demonstrate before this Court that after the issuance of the show cause notice and after the first order of remand having been passed by the appellate authority on 16.12.2013 what was the new ground upon which the petitioner has been castigated. In absence of any material, it cannot be said that the authorities have taken any new ground for which the petitioner should have been granted further fresh opportunity to rebut.

51. In light of the aforesaid, Larger Bench decision relied upon by the learned counsel for the petitioner does not help or come to the aid of the petitioner.

52. Learned counsel for the petitioner has relied on cases in Noor Jahan (supra) and they may not have any relevance in the instant case for the reason that they are all based on the premise that an inquiry in respect of license holder is to be done in a detailed manner and all these decisions are prior to the date of the decision of the Larger Bench decisions in Shankar Prasad (supra) when noticing the divide the Larger Bench held that the word 'full fledged inquiry' as used in the Full Bench decision of ***Puran Singh Vs. State of U.P. 2010 2 UPLBEC 947*** is to be read in context with paragraph 4 and 5 of the Government Order and the scheme therein merely indicates that it requires the adherence to the principle of natural justice and it does not provide for a detailed inquiry procedure involving various stages and steps, as are required to be met in disciplinary inquiry against a government servant.

53. This Court is of the view that adequate opportunity was granted to the petitioner and it cannot be said that there was any violation of principle of natural justice especially when the inquiry is to be held in a summary fashion as held by the Larger Bench in Shankar Prasad (supra). Thus, for the aforesaid reasons, the submissions of the learned counsel for the petitioner as far as it relates to the violation of principle of natural justice cannot be sustained and accordingly it is turned down.

54. Now coming to the other issue raised by the learned counsel for the parties in respect of the right of a licensee vis-a-vis the right to contest the proceedings in a writ petition.

55. The word license has not been defined in either the Essential Commodities Act or in the Government Control Order or the Government Order issued by the State from time to time. The word license has been defined in the Indian Easements Act, 1882 which reads as under:-

"52. "License" defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license"

56. The Apex Court in ***A. S. Motors Private Limited Vs. Union of India (2013) 10 SCC 114*** had an occasion to consider an issue relating to the cancellation of contract vis-a-vis violation of principle of natural justice and it has held as under:-

"7. It was argued on behalf of the appellant that the termination of the contract between the parties was legally bad not only because the principles of natural justice requiring a fair hearing to the appellant were not complied with but also because there was no real basis for the respondent Authority to hold that the appellant had committed any breach of the terms and conditions of the contract warranting its termination. We find no merit in either one of the contentions. The reasons are not far to see.

8. Rules of natural justice, it is by now fairly well settled, are not rigid,

immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice."

57. This aspect was also noticed by the Larger Bench in Shankar Prasad (supra) and mere particularly in paragraphs 45 and 46 which has already been reproduced in pare 29 hereinabove.

58. In light of the aforesaid, it cannot be said that the respondent State did not have the authority to terminate the agreement. The agreement which is entered into between the State and the licensee is of a determinable character. In such a case where the State is one of the contracting party it is implicit that the State must adhere to the provision and clause of the agreement scrupulously. However, that does not rob the State of its power to cancel the agreement. In a case of cancellation in light of the discussions noted above as well as the proposition laid down by the Larger Bench in Shankar Prasad (supra), the Court in exercise of power under Article 226 is not primarily concerned with the merit of the decision rather it is the decision making process which takes primacy. The State is the principal and the licensee is its agent. The State being the principal has the right to terminate the contract, of course, with the caveat that its decision does not fall foul of being arbitrary. However, if a decision is taken by adhering to the principles of natural justice and a view is formed then merely because another view may be possible, the Court in exercise of its power under Article 226 of the Constitution of India will not take a different view, unless it is perverse.

59. For the aforesaid reason and noticing that the grounds which have been raised by the learned counsel for the petitioner regarding violation of principles of natural justice which could not be demonstrated adequately to persuade this Court to take a different view, other than the one arrived at by the authorities coupled, with the fact that the license issued in favour of the respondent no.4 has been revoked since 01.02.2008 and more than 17 years have lapsed hence this Court does not find that in the given circumstances, there is any scope to interfere with the orders passed by the Sub Divisional Magistrate concerned dated 17.02.2014 and 31.01.2015 passed by the appellate authority.

60. Consequently, the petition is **dismissed** and costs are made easy.

(2025) 5 ILRA 626
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.05.2025

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Application U/S 528 BNSS No. 5944 of 2025

Smt. Raveena Meena ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Vinay Kumar

Counsel for the Opposite Parties:
G.A.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 173 (4)-Application U/S 173(4) BNSS moved- impugned order-directed to proceed with the application as a complaint case-Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed- on a prima facie reading of the complaint -clearly indicate the need for police investigation-the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate-if investigation in the matter is not required then in that eventuality, the Magistrate/Court of competent of jurisdiction can treat the application under Section 173(4) BNSS as a 'complaint case'-no interference in impugned order.

Application dismissed. (E-9)

List of Cases cited:

1. All Institute of Medical Sciences Employees Union Vs U.O.I. 1996 (4) Crimes 189 (Supreme Court)

2. Hari Singh Vs St. of U.P 2006 Criminal Law Journal 3283

3. Lalita Kumari Vs Government of U.P. & ors., 2014 (2) SCC 1

4. Anil Kumar Vs Vs M.K. Aiyappa (2013) 10 SCC 705

5. Vishwanath Vs St. of U.P. & ors., (2020) ILR 2 All 889

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Vinay Kumar, learned counsel for the applicant, Mr. Amit Singh Chauhan, learned A.G.A. for the State and perused the record.

2. This application U/S 528 BNSS has been filed by the applicant to quash the impugned order dated 15.01.2025 passed by Chief Judicial Magistrate, Firozabad in Misc. Case No. 3148 of 2024 (Smt. Raveena Meena Vs. Murarilal Meena and another), under Section 173 (4) of BNSS, 2023, Police Station Tundla, District Firozabad, pending in the court of Chief Judicial Magistrate, Firozabad, by which the application under Section 173(4) BNSS filed by the applicant has been treated as complaint case.

3. Brief facts of the case are that on 06.12.2024 at about 4 p.m., the applicant was going to the market for some work, when Murarilal Meena and Subah Singh Meena met her in the market, made obscene gestures to her and passed dirty comments towards her. The applicant came home, told the whole incident to her husband and other family members. When her husband went to complain to the accused persons, those people abused him and assaulted him. Murarilal caught hold of the applicant from behind and did obscene