

HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.276/2016

Date of order: 28th January 2016

Thakur SinghPetitioner

Versus

State of H.P. & OthersRespondents

Coram:

The Hon'ble Mr. Dharam Chand Chaudhary, Judge.

Whether approved for reporting? ¹

For the petitioner: Mr. Amit Singh Chandel, Advocate

For respondent No.1: M/s. Virender K. Verma and M. L. Chauhan, Addl. A.Gs.

For respondents No.2 to 4: Mr. Mukul Sood, Advocate

For respondent No.5 : Mr. Naresh Sharma, Advocate vice
Mr. Sanjeev Sood, Advocate

Dharam Chand Chaudhary, J. (Oral)

Challenge herein is to the order Annexure P-18 whereby the 2nd respondent has delisted the truck bearing registration No.HP-58-3567 belonging to the petitioner from lifting cement and other goods from the cement plant of ACC Limited, Barmana, Distt. Bilaspur (H.P.).

2. The facts in a nutshell are that consequent upon the judgment dated January 6, 2011 passed by a Division Bench of this Court in CWP No.2402/2008 titled Baldev Singh vs. Himachal Pradesh Ex-Servicemen Corporation & Others, the 2nd

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes

respondent has served the petitioner with show cause notice dated 21.12.2015 and thereby called upon him to show cause within seven days from the date of receipt thereof as to why the truck belonging to him is not delisted from lifting the cement and goods from the cement plant of ACC Limited, Barmana, Distt. Bilaspur (H.P.). The petitioner submitted that he did not receive the notice, however, he also submitted the reply Annexure P-17 alongwith other similarly situated truck owners which was received in the office of 3rd respondent on 23rd January, 2016. However, it is well before that the 2nd respondent has delisted the truck belonging to the petitioner from lifting cement and goods from the cement plant of ACC Limited, Barmana vide impugned order Annexure P-18. The complaint, therefore, is that the impugned order is violative of the principle of natural justice as according to the petitioner he is condemned unheard.

3. True it is that the petitioner has failed to submit reply to the show cause notice well within the stipulated period and, as such, the fact remains that the impugned order has been passed without hearing the petitioner and taking into consideration his response to the show cause notice. The impugned order takes away the right of livelihood a fundamental right of the petitioner as his truck listed with 2nd respondent has been ordered to be delisted thereby. Therefore in the event of the impugned order

which on the face of it is violative of principle of natural justice is allowed to remain in force the petitioner cannot transport the cement and goods from the cement plant and earn his livelihood. This Court feels that the order under challenge having the penal consequences should have not been passed without taking into consideration the response of the petitioner to the show cause notice and affording him the opportunity of being heard. Learned counsel also submitted that the petitioner would feel content if without expressing any opinion qua merits of the case, this writ petition is disposed of at this stage itself with a direction to the 2nd respondent to take a conscious decision in the matter after taking into consideration the reply Annexure P-17 to the show cause notice submitted by the petitioner and affording him an opportunity of being heard. In the considered opinion of this Court in case the writ petition is disposed of at this stage in the manner as suggested by learned counsel no prejudice is likely to be caused to the respondents, particularly the 2nd respondent.

4. In view of the above, there shall be a direction to the petitioner to appear before the 2nd respondent alongwith a copy of this judgment on **15th February, 2016** at 11.00 A.M. It is left open to the said respondent either to hear the petitioner on the same day or fix any other date for the purpose under intimation to him. It is thereafter and taking into consideration

the reply Annexure P-17 to the show cause notice, the said respondent shall take a conscious decision qua delisting of the truck belonging to the petitioner. Till a decision is taken by the 2nd respondent in the light of this judgment the truck bearing registration No. HP-58-3567 of the petitioner, shall be allowed to carry cement/goods from the cement plant of ACC Limited, Barmana, Distt. Bilaspur (H.P.). The liberty to the petitioner to seek remedy in accordance with law in the event of the decision taken by the 2nd respondent goes against him. The writ petition stands disposed of accordingly, so also pending application(s), if any.

January 28, 2016
(rana)

(Dharam Chand Chaudhary),
Judge.