

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)
Present

Madam Justice Kashefa Hussain

And

Madam Justice Fatema Najib

Writ Petition No. 15057 of 2019

In the matter of:

An application under Article 102 of
the Constitution of the People's
Republic of Bangladesh.

-And-

In the matter of:

Mohammad Hamidul Hoque
..... Petitioner.

Vs.

The Government of People's
Republic of Bangladesh represented
by the Secretary, Local Government
Division, Ministry of Local
Government, Rural Development and
Co-operatives, Bangladesh
Secretariat, Police Station-Ramna,
District-Dhaka-1000 and others.

.....Respondents.

Mr. Mohammed Ziaul Hoque, Advocate
with Mr. Sayed Misbahul Anwar, Advocate
with Mr. Md. Sohrab Sarker, Advocate

.....for the petitioners.

Mr. Noor Us Sadik Chowdhury, D.A.G
with Mr. Md. Awlad Hossain, A.A.G
with Mr. Rashedul Islam, A.A.G

... for the respondents No. 1-4

Mr. Md. Asaduzzaman, Advocate with
Mr. Foyej Ahmed, Advocate with
Mr. Md. Jashim Uddin, Advocate with
Ms. Nigar Sultana, Advocate

..... for the respondents No. 5-6.

**Heard on: 25.05.2022, 29.05.2022, 30.05.2022,
02.06.2022 and judgment on: 05.06.2022.**

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why unlawful and arbitrary striking down of the name of the petitioner from the trade license of Messer's Poushee Hotel and Restaurant issued on 15.04.2019 without assigning any reason by the Mayor, Cox's Bazar Municipality (Respondent No. 4) by discontinuing the trade licenses issued against the name of the petitioner since 2009-2010 to 2017-2018 should not be declared to have been done without any lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to include the name of the petitioner in the trade license of Messer's Poushee Hotel and Restaurant for the year 2018-2019 and for the subsequent years and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Mohammad Hamidul Hoque Son of late Ahamod Hosen, Proprietor of Poushee Hotel and Restaurant Muktijodda Sarani (Sayeman Road) Jawtala, Cox's Bazar of Residence: Maddham Baharchara, Muktijodda Sarani, Ward No. 10, post office: Cox's Bazar-4700, Cox's Bazar Pourashava, Police Station: Cox's Bazar Sadar, District: Cox's Bazar is a citizen of Bangladesh. The respondent No. 1 is the Secretary, Local Government Division, Ministry of Local Government, Rural Development and Co-operatives, Bangladesh Secretariat, Shahbag, Dhaka, respondent No. 2

is the Deputy Commissioner, Office of the Deputy Commissioner, East Court Hill Road, Cox's Bazar, 4700, respondent No. 3 is the Superintendent of Police, Office of the Superintendent of Police, New Circuit House Road, Cox's Bazar, 4700, respondent No. 4 is the Mayor, Cox's Bazar Municipality Office, East Court Hill Road, Cox's Bazar, 4700, the respondent No. 5 is the Abu Bakar Siddiq son of late Ahmed Kabir and Dholu Bibi of Holding No. 1123, Boilla Para, Baitus Shorof Area, Post Office – Cox's Bazar 4700, Police Station and District- Cox's Bazar and respondent No. 6 is the Joynob Ara Begum wife of Abu Bakar Siddiq and daughter of Rabeya Khanom of Holding No. 1123, Billa Para, Baitus Shorof Area, Post Office- Cox's Bazar 4700, Police Station and District-Cox's Bazar.

The petitioner's case inter alia is that he is a co-proprietor of the "Poushee Hotel and Restaurant " (herein after referred to as 'the Restaurant') which is a very renowned restaurant in Cox's Bazar city. That the restaurant has been doing its business for a long period of time and has become one of the most desired eating destination for tourists as well as local people. That the petitioner as a co-proprietor of the restaurant invested all his money and has been working dawn to dusk to keep up the business running and to maintain its name and fame. That the petitioner is a regular tax payee of the National Board of Revenue having his E-TIN No. 739646510469 Circle – 86 (Cox' Bazar) upon also paying all the applicable taxes to the Government. The petitioner entered into a partnership deed on 28.10.2002 with the then owner of the Poushee Hotel and Restaurant and upon investment became 25% share holder of the Poushee Hotel and Restaurant. That

upon executing the above said partnership deed the petitioner had been doing business as a co-proprietor of the Poushee Hotel and Restaurant. That in the course of business the petitioner entered into another agreement on 25.05.2011 with another Co-proprietor namely Abu Bakkar Siddik and obtained 25% shares from Abu Bakkar Siddik of the said Restaurant. That the co-proprietor of the said restaurant namely Abu Bakkar Siddik and Joynob Ara Begum executed another partnership deed with the petitioners on 23.08.2015 stating inter alia that the parties have been doing business of Poushee Hotel and Restaurant by investing jointly for last 14 years. That the business of the Poushee Hotel and Restaurant had been running vide the trade license issued against the name of the petitioner and 02 others namely Abu Bakkar Siddik and Joynob Ara Begum for a long time since 2009-2010 and has been renewed year to year till the year 2017-2018. That thereafter in the year 2018-2019 to the utter surprise of the petitioner the Cox's Bazar Municipality without assigning any reason omitted the name of the petitioner in the trade license and with a malafide intention issued the trade license only against the name of the 2 co-proprietors namely Abu Bakkar Siddik and Joytnob Ara Begum. That revenue and taxes were also paid for the restaurant impleading the name of the petitioner as co-proprietor of the restaurant. That the office of the Cox' Bazar Municipality vide its Memo No. কপৌ/২০১৮/২৫৩৫ dated 17.12.2018 certified that the petitioner is a partner of the Poushee Hotel and Restaurant and had been doing business since 2002 with name and fame. That a notice dated 18.02.2019 was served upon the petitioner stating inter alia to

appear before the office of the Cox's Bazar Municipality on 02.03.2019 and accordingly the petitioner appeared before the office of the Cox's Bazar Municipality at the time and date specified in the notice. That no hearing was concluded, neither any order was passed nor any further date was fixed for further hearing or order. That Cox's Bazar Municipality without assigning any reason or without conducting any hearing most arbitrarily and upon bias struck down the name of the petitioner from the trade license issued for the year 2018-2019. That no enquiry or investigation was conducted either by the respondent No. 04 regarding the issue. That being aggrieved and dissatisfied with the action of the Cox's Bazar Municipality the petitioner on 09.05.2019 submitted an application to cancel the controversial trade license and to reissue trade license including the name of the petitioner. That finding no other way the petitioner was constrained to serve a notice demanding justice to the respondent No. 04 on 16.05.2019 and forwarded the same to the respondent Nos. 1-3 for their information. However the respondent No. 4 did not take any fruitful measure. That upon serving the Demand of Justice Notice dated 16.05.2019, the respondent No. 04 informed that he will look into the matter and will conduct a hearing but no hearing or order was passed rescinding the trade license issued for the year 2018-2019. That finding no other alternative the petitioner sent another notice demanding justice on 04.12.2019 to the respondent No. 04 and to the respondent Nos. 01 to 03 for information. Hence the writ petitioner being aggrieved filed the writ petition.

Learned Advocate Mr. Mohammed Ziaul Hoque along with learned Advocate Mr. Sayed Misbahul Anwar along with Mr. Md. Sohrab Sarker, learned Advocate appeared on behalf of the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents No. 1-4 and learned Advocate Mr. Md. Asaduzzaman along with Mr. Foyej Ahmed, learned Advocate along with Mr. Md. Jashim Uddin, learned Advocate along with Ms. Nigar Sultana appeared for the respondent Nos. 5-6.

Learned Advocate for the petitioner submits that the unlawful cancellation of the trade license of the petitioner is absolutely unlawful and without lawful authority and is an infringement into the fundamental rights of the petitioner guaranteed under article 27, 31 and 40 of the Constitutions. Upon elaborating his submissions he asserts that although it is evident from the records and from the documents annexed there to that the petitioner is a lawful partner under the partnership by way of চুক্তিপত্র (contract agreement) with the added respondent Nos. 5 and 6 and all three co-proprietars were accordingly granted trade license to run the Hotel/Restaurant. He contends that however the respondent No. 4 Pourosova most unlawfully without assigning any satisfactory reason cancelled the petitioner's trade license. He submits that the petitioners entered into agreement with the respondent No. 5 by way of চুক্তিপত্র (contract agreement) in the year 2002 which is marked as annexure A. He asserts that it is evident from Annexure A that the petitioner entered into a valid চুক্তিপত্র (contract agreement) on 28.10.2002 and the চুক্তিপত্র

(contract agreement) which is annexure B is the renewal চুক্তিপত্র (contract agreement) dated 20.05.2011 and finally by way of Annexure C which is yet another চুক্তিপত্র (contract agreement) entered into between the respondent Nos. 5 and 6 and the petitioner. He submits that from these annexures it is clear that the petitioner was continuing his business upto a share of 25% along with the respondent Nos. 5 and 6 and had been running business jointly with the respondent No. 5 and 6 and the petitioner is owner upto 25% of the shares. He next draws our attention to Annexure D series drawing upon which he points out that from Annexure D series it is evident that pursuant to the contract agreement between the respondent Nos. 5 and 6 and the petitioner, respondent No. 4 issued trade license in favour of all the three owners of Poushee Hotel and Restaurant which includes the petitioner. Relying upon Annexure D(7) series he submits that by the several trade licenses issued from time to time in the names of all three that is the petitioner and the respondent Nos. 5 and 6, it is evident that the petitioner and the respondent No. 5 and 6 were co-proprietors continuing in the capacity of co-owner of Poushee Hotel and Restaurant. He asserts that the renewal of the Trade licenses several times prove that the petitioner is also a valid and lawful owner by dint of a valid trade license till the year 2018. He submits that however the respondent No. 4 most unlawfully on 15.04.2019 cancelled the trade license of the petitioner without assigning any reason. To substantiate his assertion he takes us to annexure E of the writ petition and shows that by way of Annexure E the respondent No. 4 issued trade license on 15.04.2019 in favour of the respondent No. 5

and 6 but however they most arbitrarily refrained from issuing trade license in the name of the petitioner. He next takes us to Annexure H which is a show cause notice dated 18.02.2019 which was issued upon the petitioner by the office of the respondent No. 4 prior to the cancellation of the trade license. He submits that relying upon the show cause notice the petitioner duly appeared as instructed by the respondent No. 4 before the office of the respondent No. 4 for purpose of hearing and proof of his appearance, which is marked as annexure H1 of the writ petition. By annexure H1 he also pointed out that the petitioner also appeared duly before the office of the respondent No. 4 on 02.03.2019. He submits that although the petitioner did his duty and lawfully appeared before the office of the respondent No. 4 on the designated date but however no hearing took place that day nor thereafter any hearing took places on any other date. He submits that the respondent No. 4 acted in total violation of the principles of natural justice by not affording the petitioner any chance to explain his position and not giving him any hearing and thereby caused a grave violation of fundamental rights of the petitioner guaranteed under the Constitution. He next submits that although the petitioner and the Added respondents No. 5 and 6 are all co-owners of the Poushee Hotel and Restaurant by dint of valid partnership agreement and have been issued trade license for several years till 2018 but however the respondent No. 4 most arbitrarily discriminated the petitioner with the respondent No. 5 and 6 by issuing trade license in their favour by way of annexure E while not issuing trade license in the name of the petitioner and thereby caused gross injustice to the

petitioner. He submits that it was the lawful and constitutional duty of the respondent No. 4 to give the petitioner a chance of hearing before taking any steps against the interest of the petitioner.

He next takes us to Annexure X-10 of the supplementary affidavit in opposition filed by the respondent No. 5 and 6. By drawing attention to the language and contents of Annexure X-10 the learned Advocate for the petitioner persuades that from the very language and contents of Annexure X-10 it appears that the conduct of the respondent No. 4 is not impartial towards the parties. He draws attention to the annexure X-10 and contends that the pourasava without investigating into the actual facts and in absence of any inquiry upon total surmise and conjecture reached upon some findings. He continues that however the pourasova could not even explain the basis of its finding. He also takes us to the same Annexure-X-10 which is the reply to the demand of justice of the petitioner and shows that the reply was given on 02.02.2020 whereas the demand of justice notice was sent much earlier on 16.05.2019. He next shows us that the petitioner however filed the instant the Writ Petition in 2019 before the reply to the demand of justice notice. By drawing upon these factual issues the learned Advocate for the petitioner points out that it is evident from the conduct of the pourasova respondent No. 4 that although the two demands of justice notices were consecutively sent to the Respondent No. 4 much earlier but however the pourasova replied to the petitioner only once the writ petition was filed. He agitates that such conduct of the pourasova show that the respondents did not acted impartially towards the

petitioner which impartiality and neutrality they are bound to follow being persons in service of the republic. He reiterates that by not giving even a chance of hearing to the petitioner is a direct infringement upon the fundamental rights of the petitioners and cancelling his trade license and thereby depriving him of his valid source of income and depriving him from running a lawful business is in direct infringement of his fundamental rights inter alia under Article 40 of the Constitution. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

By way of an affidavit in opposition filed on behalf of the respondent Nos. 5 and 6 along with a supplementary affidavit in opposition, the learned Advocate for the Respondent No. 5 and 6 vehemently opposes the Rule. He submits that the respondent No. 4 lawfully cancelled the trade license of the petitioner since the petitioner is not a partner under the provisions of The Partnership Act, 1932. To substantiate his argument he takes us to Annexure A which is the initial চুক্তিপত্র (contract agreement) executed between the petitioner and respondent No. 6 namely Joynob Ara Begum. He takes us to Annexure A and points out that even though the চুক্তিপত্র (contract agreement) was signed between the respondent No. 5 and the petitioner initially on 28.10.2002 with the petitioner holding up to 25% shares but however there are certain conditions laid out in the চুক্তিপত্র (contract agreement) . He points out that the চুক্তিপত্র (contract agreement) contemplates that the continuous partnership of the petitioner along with respondent Nos. 5 and 6 is subject to a condition.

He next takes us to Annexure-B which is the 2nd ଚୁକ୍ତିପତ୍ର signed between the petitioner and the respondent No. 5 and the petitioner on 20.05.2011. The learned Advocate for the Respondent Nos. 5 and 6 points out that in this agreement also similar condition have been laid out subject to which partnership shall exist or shall not exist depending on some contingency and the circumstances contemplated in the condition. He draws attention to Annexure C which is the final agreement executed between the respondent Nos. 5 and 6 and the petitioner who holds upto shares of 25% in the said partnership. The learned counsel for the respondents particularly draws attention to paragraph No. 2 of the agreement dated 23.08.2015 which is an agreement for a period of 6(six) years. He particularly draws attention to paragraph No. 2 and shows us that paragraph No. 2 of the last agreement also laid some conditions subject to which the partnership may be renewed depending on contingencies. He submits that therefore the ଚୁକ୍ତିପତ୍ର by way of Annexure- A, B and C is clear enough to show that the partnership entered into between the petitioner with the respondent Nos. 5 and 6 did not create any vested right of his partnership which partnership he asserts is only subject to certain conditions. He further submits that the trade license of the petitioner was lawfully cancelled by the respondent No. 4 given that after 2018 the partnership was dissolved between the petitioner and the respondent Nos. 5 and 6.

In this context the learned Advocate for the respondent No. 5 and 6 argued that the petitioner has no locus standi at all to file the writ petition since the trade license was issued previously in his name

only by virtue of the চুক্তিপত্র with the respondent Nos. 5 and 6. He submits that since the চুক্তিপত্র does not exist anymore and the petitioner is not a lawful partner nor business associate of the respondent No. 5 and 6 anymore, therefore he retains no legal entitlement to be issued trade license in his favour.

The learned Advocate for the respondent Nos. 5 and 6 further made some other factual argument regarding the issue of partnership.

Upon a query from this bench regarding the respondent No. 4 acting unlawfully in not giving the petitioner an opportunity of hearing before cancelling his trade license, the learned Advocate for the respondent controverts on the issue of show cause. The learned Advocate for the respondent No. 5 and 6 persuades that the petitioner was granted a date for hearing by issuing show-cause and that it is evident from annexure H that he was called for hearing and it is also evident that the Annexure H1 that he appeared for hearing. On this issue, he argues that therefore it may be assumed and presumed that both the parties were duly heard and trade license was cancelled after giving the petition sufficient hearing. Relying on his submissions he also contends that therefore the respondent No. 4 did not commit any illegality in cancelling the trade license of the petitioner.

He next submits that writ is not maintainable since the petitioner should have resorted to the alternative remedy contemplated under Section 118 of the স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ . He submits that section 118 of the স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ contemplates that if any person is aggrieved by any order of the Mayor or the Pourosova he may file an appeal under Section 118 of the স্থানীয় সরকার

(পৌরসভা) আইন, ২০০৯ . Upon a query of this bench regarding the petitioner's assertion that the principles of natural justice was not followed by the respondents, the learned Advocate for the respondent Nos. 5 and 6 argues that this case is different from the general principle of natural justice and falls within an exception. Relying on his assertions that natural justice has not been violated in this case, he cited two decisions one in the case of Govt. of Bangladesh and ors Vs. Md. Salim Reza and Ors reported in 13 BLC(AD)2005 page 50 and in the case of Professor Dr. Md. Yusuf Ali Vs. the Chancellor of Rajshahi University reported in Vol. XVIII. He submits that in these decisions our Apex court made some exceptions to the general principle of natural justice under particular circumstances. He submits that analogy may be drawn from these decisions and the petitioner's case also falls with the exception.

The learned Advocate for the respondent No. 5 and 6 next submits that in this case fraud was committed by the petitioner and tries to impress upon us that the trade license which was issued in the name of the petitioner was unlawful since the Trade License was obtained upon committing fraud upon the respondent No. 4. He continues that it is a principle of law that fraud vitiates everything and consequently the instant petitioner has no legal footing to file the writ petition. He submits that in this case the principles of natural justice cannot be drawn upon since the trade license the petitioner is relying upon and which issued in his name earlier, however the চুক্তিপত্র pertaining to which the trade license was issued does not exist anymore at all therefore the partnership also did not continue anymore

between the petitioner and the respondent Nos. 5 and 6. He continues that the trade license of the petitioner was automatically cancelled and asserts that show cause also was not necessary and the principles of natural justice is not violated in this writ petition. He concludes that under the facts and circumstances the Rule bears no merits ought to be discharged for ends of justice.

Learned D.A.G along with Learned A.A.G substantively support the submissions of the learned Advocate for the respondent Nos. 5 and 6 and opposes the Rule. The learned D.A.G concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

We have heard the Advocates for both sides, perused the writ petition and the materials on records including the decision cited by the learned Advocates.

It is an admitted facts that three চুক্তিপত্র (agreement) by way of Annexure- A, B and C was executed between the petitioner and the respondent Nos. 5 and 6 and the চুক্তিপত্র continued till the tenure of the final চুক্তিপত্র. The learned Advocate for the respondents argued that there are some conditions laid down in the চুক্তিপত্র subject which to the চুক্তিপত্র shall exist or shall not exist depending on the contingencies contemplated in the চুক্তিপত্র. We have perused the condition in the চুক্তিপত্র. The conditions laid out in Annexure A is reproduced hereunder:

আমি ২য় (দ্বিতীয়) পক্ষ ভাড়া নেওয়ার দোকানের মেয়াদ শেষ হইয়া গেলে যদি পুনরায় মালিক হইতে ভাড়া নিই, তবে আপনি ১ম (প্রথম) পক্ষকে উক্ত চুক্তি মোতাবেক শেয়ারদার রাখিতে বাধ্য থাকিবে।

It appears that similar condition in same language has also been contemplated in the following two চুক্তিপত্র marked as Annexure B and C. The respondent Nos. 5 and 6 also vehemently argued that the চুক্তিপত্র is not in existence any more. But however nothing there is on record to show that the condition by way of a contingency took place which is contemplated annexure A, B and C subject to the চুক্তিপত্র shall exist or shall not exist.

The learned Advocate for the respondents also made allegation of fraud against the petitioner and persuaded that the petitioner availed the trade license unlawfully. In this Rule we are not in a position to examine or scrutinize or adjudicate upon assertion of factual matters arising out of চুক্তিপত্র, which is the চুক্তিপত্র between the respondent No. 5 and 6 and the petitioner.

However our considered view is that for purpose of disposal of the Rule we have to look and examine as to whether the respondent No. 4 who issued the trade license to the petitioner and the respondent No. 5 and 6 name previously subsequently acted lawfully or not. The respondent No. 4 is a person acting in service of the republic and the Respondent No.4 issued the trade license. It is evident from the records that the respondent No. 4 from the year 2009-2018 issued two trade licenses by way of Annexure D series. The petitioners' name is issued jointly along with the name of respondent Nos. 5 and 6. It is our considered view that when the trade license, were jointly issued by the respondent No. 4, such joint issuance evidently contemplated that they are joint partners in some business enterprise. Whatsoever may have happened subsequently are factual matters and are not for as

to mull over nor adjudicate upon. Sitting in writ Jurisdiction our duty is to supervise as to whether the respondent No. 4 before cancelling the trade license of the petitioner which is Annexure-E which is impugned memo afforded due process upon the petitioner. It is true that a trade license is not a vested right. But nevertheless, it is his constitutional right to be afforded a chance to explain his position before seizing a person of his valid source of income. We have examined Annexure H and H1. Annexure H shows that the petitioner was called for hearing by a show cause notice issued by the respondent No. 4 on 18.02.2019 asking him to duly appear on 02.02.2019. Annexure H1 shows that the petitioner also duly appeared before the respondent on 02.03.2019. But however pursuant to his appearance even though the petitioner appeared duly on 02.03.2019 which is evident by Annexure H1 however there is nothing on record to show that the parties which include the complainants (Respondent No. 5 and 6) that they were given an impartial chance of hearing.

The learned Advocate for the respondent No. 5 and 6 vehemently argued that in this case the hearing was actually done. Regrettably enough however the learned Advocate for the respondent Nos. 5 and 6 could not show any documentary evidences that hearing was done. Needless to state that if hearing was done, it would be followed by a report of the proceedings of the hearing by way of documentation. Although the respondent No. 5 and 6 vehemently argues on this issues but neither of the respondents could show any such report. Such being the facts it may be presumed that no hearing was actually done.

Therefore we are of the considered opinion that the respondent No. 4 acted unlawfully by not giving him a chance of hearing to the petitioner and violated the principles of natural justice. It was the respondent No. 4's constitutional duty to complete the process which it they initiated.

The learned Advocate for the respondent Nos. 5 and 6 also argued that the petitioner obtained trade license previously upon committing fraud. Regrettably enough such argument of the learned Advocate for the respondent Nos. 5 and 6 cannot be sustainable in this case. Since whether any fraud committed or not is a factual issue and moreover the trade license was issued by the respondent No.4 is a statutory body. Evidently the Trade License was issued by the pourashova within their full knowledge.

Therefore whether at all fraud was committed or not, ought to be the concern of the pourashava who issued the Trade License. Moreover as stated above "Fraud" is a disputed matter of fact and is subject to evidence. There is evidently no such evidence to substantiate the Respondents No. 5 and 6 claim of fraud here.

The learned Advocate for the respondent Nos. 5 and 6 also argued on the issue of alternative remedy and writ being not maintainable because of availability of alternative remedy under Section 118 of the স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ . Our considered opinion on this issue is that although alternative remedy may be available, but in this case the principle of natural justice shall apply. A process was initiated by the authority themselves (respondent No. 4), therefore such process ought to be completed and exhausted for ends

of justice. The learned Advocate for the respondent Nos. 5 and 6 relied upon some decisions of our Apex court. We are of the considered view that the circumstances in those cases and the circumstances in this case are not the same. In this case show cause was issued and process was initiated by way of issuing show cause and the petitioner also appeared. We do not find any lapses of the petitioner in the process. We opine that the petitioner ought to be given a chance to be heard following the principles of natural justice and the process of show cause which was initiated by the respondent No. 4 must be completed.

We have also perused the reply to the demand of justice notice which is Annexure X(10) of the supplementary affidavit. Regrettably enough we are of the opinion that the language of the reply to the demand of justice notice given by the respondent No. 4 does not appear to be impartial. It appears that the respondent No. 4 has presupposed and predetermined the ineligibility of the petitioner to be granted trade license upon making some factual statements the respondent no. 4 in his reply to the demand of justice notice. However the respondent no. 4 did not state or otherwise disclose the source of his finding. We are of the considered view that a person in the service of the republic by way of mayor of a pourashova whatsoever he while giving his finding on a particular fact or allegation must assign the reasons and basis of his finding. In this particular case however the respondent no. 4 did not give its reason in the reply to the demand of justice notice for coming to its conclusion. Such conduct of the respondent No. 4 is not desirable and clearly makes the role of the

Respondents No.4 questionable, casting doubts on his neutrality and impartiality. However, under the facts and circumstances, and relying on the observations made above we are inclined to dispose of the Rule. We are inclined to dispose of the matter with directions.

In the result, the Rule is disposed of. The respondent No. 4 is hereby directed to issue fresh show cause notice upon the petitioner and depending upon his due appearance, the respondent No. 4 is also directed to give him an opportunity of being heard and reach its finding in accordance with law within a period of 60(sixty) days from receiving of this judgment.

Communicate this judgment at once.

Fatema Najib, J:

I agree.

Arif(B.O)