

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.27/2023

Smt. Manika Debnath

..... Petitioner(s)

V E R S U S

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. Dipankar Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

13/01/2023

Challenge in the present writ petition has been made to an order dated 26.12.2022 issued by the Secretary, Health & Family Welfare Department, Government of Tripura at Annexure-8 to the writ petition whereby the Secretary, H&FW Department being the appellate authority rejected the appeal filed by the petitioner being time lapsed affirming the memorandum dated 21.09.2022 passed by the Deputy Drugs Controller being the Licensing Authority.

2. Case of the petitioner, in brief, is that the petitioner had prayed for granting Restricted License under Rule 62B of the Drugs & Cosmetics

Rules, 1945 in their area at Noabadi, Durga Choudhury Para, but the prayer was rejected by the Deputy Drugs Controller, Government of Tripura vide memorandum dated 21.09.2022. Thereafter, the petitioner being aggrieved by such order filed appeal before the Secretary, Health & Family Welfare Department, Government of Tripura. The appellate authority vide order dated 26.12.2022 rejected the appeal filed by the petitioner stating that there was no requirement of any restricted license shop as the said area is well connected and sufficient retail medicine shops are available in the surroundings. Aggrieved thereby, the petitioner has filed the present writ petition for quashing the impugned order dated 26.12.2022 passed by the Secretary, Health & Family Welfare Department, Government of Tripura (Appellate Authority). Hence, this case.

3. Since the appeal of the petitioner was rejected by the appellate authority, she has preferred the present writ petition before this Court seeking the following reliefs:

"(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby quashing and cancelling the impugned Order, dated 26.12.2022, passed by the Secretary, Health &* Family Welfare Department, Govt. of Tripura (Appellate Authority).

(ii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to grant restricted license in Form 20A & 21A in favour of the Petitioner under the Drugs & Cosmetics Rules, 1945.

(iii) Call for the records pertaining to the instant Writ Petition from the custody of the Respondents.

(iv) Make the Rules absolute after hearing the Parties

AND

Pass any other order/orders as this Hon'ble High Court may consider fit and proper."

4. Heard Mr. D. Paul, learned counsel led by Mr. P. Roy Barman, learned senior counsel appearing for the petitioner. Also heard Mr. Dipankar Sharma, learned Addl. Government Advocate appearing for the respondents-State.

5. Mr. D. Paul, learned counsel appearing for the petitioner, submits that there is no bar/limitation as to the total number of medicine shops in a locality under the Drugs & Cosmetics Rules, 1945 and the petitioner is well within her right to pray for granting of restricted license in Form 20A and 21A under the said Rules in her favour to run a business as her Right to business has been protected under Article 19(1)(g) of the

Constitution of India. Accordingly, he prays for quashing the impugned order dated 26.12.2022 passed by the Secretary, Health & Family Welfare Department, Government of Tripura.

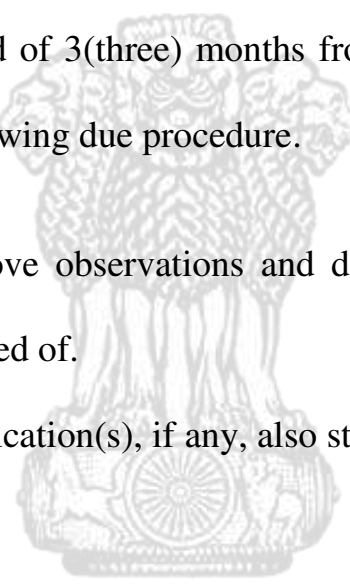
6. On the other hand, Mr. Dipankar Sharma, learned Addl. Government Advocate appearing for the respondents-State, vehemently objected the submissions advanced by the learned counsel for the petitioner contending that the concerned appellate authority has rightly rejected the appeal filed by the petitioner being time barred, more so, the licensing authority has also turned down her application observing that there is no merit to grant restricted license in the mentioned area since it is well connected and sufficient retail medicine shops are available in the surrounding area. Accordingly, he prays for dismissal of the writ petition.

7. Having heard the submissions of learned counsel for both the parties, this Court is of the considered view that the appellate authority without explaining any reasons and also not appreciating the factual aspects of the matter rejected the application of the petitioner by passing a non-speaking and hypertechnical order and he could have more vigilant while passing the said order and as such, it would be appropriate to remand the matter back for fresh consideration.

8. Accordingly, the present writ petition is allowed. The impugned order dated 26.12.2022 passed by the Secretary, Health & Family Welfare Department, Government of Tripura (Appellate Authority) is hereby quashed and set aside and the same is remanded back to the Appellate authority to pass a speaking order after giving an opportunity of personal hearing and also furnishing a set of reports in favour of the petitioner to meet the requirement under principles of natural justice. This exercise shall be completed within a period of 3(three) months from the date of receipt of a copy of this order by following due procedure.

9. With the above observations and directions, the writ petition stands allowed and disposed of.

Pending application(s), if any, also stands disposed of.


सत्यमेव जयते **CHIEF JUSTICE (ACTING)**

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