

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1606 OF 2015

M/s. N. Parikh Distributors,
by and through its partner
Mr. Nikunj N. Parikh .. Petitioner
vs.
The State of Maharashtra & Anr. .. Respondents

Mr. A. M. Kulkarni for Petitioner.
Ms Vaishali Nimbalkar – AGP for Respondents – State.

CORAM : M. S. SONAK, J.
DATE : 17 FEBRUARY, 2015

P.C. :-

1] This petition challenges the order dated 3 February 2015 by which the State Government, has imposed penalty of suspension of fifteen days upon the petitioner carrying on any sale or distribution of drugs, under the provisions of Drugs and Cosmetics Act, 1940 (“said Act”) and the Rules made thereunder.

2] In fact, the Assistant Commissioner (Zone 7) had imposed a penalty of suspension of thirty days. By the impugned order, the State Government has reduced the same to fifteen days.

3] In the show cause notice issued to the petitioner, four defaults were pointed out :

- (a) that one of the products which require refrigeration was found not to be stored in the refrigerator;
- (b) that the name of the manufacturer was not stated on the bill, although Rule 65 requires the same;
- (c) the bills by which the drugs were sold did not contain the complete address of the purchasers; and
- (d) that there was some discrepancy between the medicines sold and the medicines that ought to have been available in the stock after such sale.

4] The petitioner furnished response to the show cause notice by pointing out that the drug in question was required to be stored at temperatures ranging 8 to 25 C and since the pharmacy was air conditioned, there was substantial compliance. Further, with regard to three further defaults, the petitioner did offer some explanation, but finally accepted that the defaults were there. The petitioner, also assured the authorities that the defaults would be rectified in future.

5] The Assistant Commissioner (Zone 7) by order dated 13 October 2014 imposed penalty of suspension of thirty days. The petitioner appealed to the State Government, which has by the impugned order reduced the penalty to suspension of fifteen days.

6] Mr. Kulkarni, the learned counsel for the petitioner submitted that the defaults in the present cases were neither substantial nor of any great moment. He submitted that in fact there was no breach of Rule 65(2) of the said Rules, which deals with sale and distribution by qualified pharmacists. In so far as Rule 65(5) and 65(17) are concerned, the breaches if at all, were only of a technical nature. The petitioner having assured the authorities that the defaults would be rectified, the penalty imposed was not justified and in any case the same was grossly disproportionate.

7] Ms Nimbalkar, the learned AGP who appears for the respondents submitted that the petitioner in reply to the show cause notice had substantially accepted the defaults. The penalty imposed by the Assistant Commissioner (Zone 7), was itself proportionate. Further, the State Government, after taking a lenient view in the matter, reduced the penalty to suspension of fifteen days. The penalty imposed, does not defy the doctrine of proportionality and therefore his Court ought not to interfere in the matter.

8] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned order. This is because the petitioner, in its reply to the

show cause notice, has substantially accepted the defaults with regard to at least 3 out of the 4 charges. In matters such as these, the defaults cannot be described as mere technical or trivial defaults. This is because under the provisions of the said Act and the said Rules, the attempt of the State is to exercise the control in the matter of sales of drugs and cosmetics products. Any lethargy in such matters, can have serious effect on public interest. The authorities have taken into consideration relevant materials and it cannot be said that the penalty imposed is grossly disproportionate. In fact, it is on account of the assurances of the petitioner that the defects would be remedied in future, that the State Government has rightly reduced the penalty to suspension of fifteen days in place of the earlier penalty of suspension of thirty days. There is neither any arbitrariness nor any unreasonableness in the approach of the respondents.

9] Consequently, no case is made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)