

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9493 of 2016

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M/s. Swastika Pharma through its Proprietor Nand Kishore Prasad @Nand Kishore, S/o late Rameshwar Lal Sah R/o Mohalla- Daldalib Road, Bakerganj PS Gandhi Maidan Distt Patna Premises situated at Maa Mathurasani Place, G.M. Road Patna -4.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department Government of Bihar, New Secretariat, Patna.
2. The State Drug Controller-cum-Chief Licensing Authority, New Secretariat, Bihar, Patna
3. The Licensing Authority, Drug Control Administration, Patna, Municipal Area, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate

For the Respondent/s : Mr. Priyadarshi Matin Sharan, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 12-08-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the order dated 9.2.2016 passed by the State Drug Controller-cum-Chief Licensing Authority, Patna by which the wholesale drug licence of the petitioner has been cancelled and also for interim relief during the pendency of the appeal preferred by the petitioner on 23.2.2016.

Since the petitioner has already filed an appeal before the appellate authority, any prayer for interim relief is also required to be made before the same authority and only after rejection of the same the petitioner could have come to this Court.

Learned counsel for the petitioner, however, submits that the appellate authority should dispose of any interim application for disposal of medicines, etc. or even the appeal against the impugned order expeditiously since the medicines in question

have an expiry date and ought to reach the persons in need of the medicines irrespective of the fact whether the licence of the petitioner is cancelled or not.

Another issue raised by learned counsel for the petitioner is that there was no occasion for the State Drug Controller-cum-Chief Licensing Authority, Patna to have passed the impugned order without there being any necessity for the same and such order ought to have been passed by the Licensing Authority and for Patna also there is a separate authority for that, namely, Licensing Authority, Patna Municipal Area.

In this regard learned counsel for the petitioner relies upon an order of this Court dated 4.12.2008 passed in CWJC No. 13488 of 2008 (M/s. Jamil Medical Hall vs. The State of Bihar & Ors.) in which this Court had observed that when the licences were granted by the Regional Licensing Authority, who was available, action by the State Drug Controller ordinarily should not be resorted to. Once this Court had made such observation in the case nearly eight years before, it is unbecoming that the licensing authorities do not act in accord with such observations. It is expected that in matters of cancellation of drug licence or any such order of penalty to be passed upon them, the same shall be done by the concerned licensing authority appointed for the area in question ordinarily and only in exceptional circumstances by the Chief Licensing Authority.

In the facts and circumstances of the case, the writ application is disposed of with a direction to the appellate authority to consider and dispose of the appeal filed by the petitioner within a period of three months from the date of receipt/production of a copy of this order.

In case the petitioner applies for an interim relief in the

meantime, whether for stay of the impugned order or for disposal of the drugs in question during the pendency of the appeal, then the appellate authority shall consider and dispose of any such application within a period of one week from the filing of the same.

(Ramesh Kumar Datta, J)

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