

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9258 of 2016

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1. M/s Capital Drug Agency through its Proprietor Ghulam Akber, S/o Anzar Ahmed, R/o Chknoor Road, Dhrampur, P.S.- Samastipur, Distt- Samastipur.

.... Petitioner/s

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, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Adv.
For the Respondent/s : Mr. Syed Arshad Alam, SC3
Mr.Fakhruddin Ali Ahmad, A.C. to S.C.3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-07-2016

Heard Mr. Ram Shankar Das, learned counsel for the petitioner and Mr. Fakhruddin Ali Ahmad, A.C. to S.C. 3 for the State.

The petitioner is a licensee under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act') and the Drugs and Cosmetic Rules, 1945 (hereinafter referred to as 'the Rules') bearing License No. SMT 60/2005 in Form-20B and the License bearing No. SMT 60A/2005 in Form- 21B issued on 28.4.2005. The petitioner is aggrieved by the order passed by the Licensing Authority, Government of Bihar, Patna dated 18.03.2016 whereby the drug licence of the petitioner has been cancelled. A copy of

such order is impugned at Annexure-4 to the writ petition.

Mr. Das learned counsel for the petitioner while questioning the order on merits has also admitted that the petitioner has taken recourse of statutory appeal under Rule 66(2) of 'the Rules' and which is pending before the appellate authority for disposal. He thus submits that the prayer of the petitioner in the writ petition presently is for interim protection pending disposal of the appeal since the foundation of the impugned order that the petitioner does hold godown licence, is itself incorrect. In support of his contention while Mr. Das has referred to the licence(s) enclosed at Annexure-3 series to the writ petition, as regarding its validity, a supplementary affidavit has been filed enclosing an order of the Licensing Authority which shows that the licence of the petitioner bearing License No. SMT 60/2005 and the License bearing No. SMT 60A/2005 has been renewed up to 27.4.2020 by the Licensing Authority himself. This order is present at Annexure-6 of the supplementary affidavit and in reference thereto it is the argument of Mr. Das that the impugned order is resting on an incorrect premise.

The argument of Mr. Das is contested by Mr. Ahmad learned State counsel on the ground that the godown found is separate from the business premise of the petitioner but these are facts not present in the impugned order and since admittedly an appeal has been

filed by the petitioner, I would express no opinion thereon. In fact it is a matter for adjudication whether the godown so found by the raiding party required a separate licence(s) or would be governed under the licence present at Annexure-3 series. Since these matters are open for contest and pending before the appellate authority, I would reserve my opinion for the present. However considering that the petitioner is operating under a valid licence hence I deem it fit and proper to order for stay of the operation of the impugned order of cancellation dated 18.3.2016 passed by the Licensing Authority impugned at Annexure-4, pending disposal of the appeal by the Appellate Authority. The petitioner should cooperate in the disposal of the appeal.

The writ petition is allowed subject to the stipulations above.

(Jyoti Saran, J)

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Uploading Date	16-7-16
Transmission Date	