

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.248 of 2010
Date of Decision: -20.07.2016

M/s Bharat Medical Store

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON’BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Akshay Jain, Advocate, for the petitioner.

Mr.Anant Kataria, DAG, Punjab.

RAKESH KUMAR JAIN, J.

The petitioner is a proprietorship firm, engaged in the retail sale of drugs through valid drugs licenses, mentioned in the petition, referred to as under: -

Retail Drugs Licenses

License No. & Date of Issue	Validity	Qualified person	Proprietor of the firm
20-23511-NB	16.05.2007 to 15.05.2012	Ms.Surinder Kaur	Dinesh Kumar son of Girja Kumar
21-23511-B	16.05.2007 to 15.05.2012	Ms. Surinder Kaur	Dinesh Kumar son of Girja Kumar

The petitioner is carrying on the business of sale of drugs in accordance with the provisions of the Drugs and Cosmetics Act, 1940 [for short ‘the Act’] and the Drugs and Cosmetics Rules, 1945 [for short ‘the Rules’]. It is alleged that the premises of the petitioner was inspected by the District Drug Inspector, Mohali on 23.1.2008 and a *show cause notice* bearing No.Drugs(4) Pb.08/2582 dated 27.02.2008 was issued which was duly replied by the petitioner. The premises of the petitioner was again

inspected on 21.3.2008 and a *show cause notice* was issued bearing

No.Drugs(4) Pb.08/10409 dated 28.07.2008, which was also replied by the petitioner. The premises of the petitioner was again inspected on 26.6.2008 and a *show cause notice* No.Drugs(4) Pb.08/10417 dated 28.7.2008 was issued to which the petitioner filed a reply. On 18.9.2008 vide its order bearing No.Drugs(4) Pb.08/13673 dated 18.9.2008, respondent No.2 cancelled the retail drug license of the petitioner. The petitioner challenged that order by way of an appeal filed under Rule 66(2) of the Rules before respondent No.1. The said appeal was dismissed vide order dated 27.11.2008 and conveyed to the petitioner vide letter/order bearing Memo No.4/119-08-(4C4)-3C6/261 dated 14.01.2009. The petitioner challenged the aforesaid orders dated 18.9.2008 and 27.11.2008 by way of CWP No.1203 of 2009, which was allowed on 27.1.2009 with the following order:-

“The appeal being of statutory character, the Appellate Authority obligated to assign reasons while dismissing the same. It is inherent and integral part of the principle of natural justice that the contentions raised on behalf of the petitioner ought to have been met by the Appellate Authority. The absence of reasons has put this Court also to a disadvantage in finding out as to what prevailed in the mind of the Appellate Authority while rejecting the appeal.

Consequently and without expressing any view on merit of the petitioner’s claim, the writ petition is allowed in part and the impugned order dated 27.11.2008 (Annexure P-10) is set aside and the matter is remitted to the Appellate Authority to decide the same afresh, in accordance with law. The appeal shall be decided at the earliest but not later than two months from the date of receipt of

certified copy of this order. However, till then the petitioner's license shall not be restored."

Thereafter, the appeal was again decided against the petitioner on 15.10.2009 and hence, the present petition has been filed.

During the course of hearing, learned counsel for the petitioner has submitted that a composite action, on the basis of all the three inspections, is an excessive exercise of power as every inspection has a separate cause of action but it is admitted that this issue is not raised in the writ petition. It is further submitted that the license has been cancelled without there being any purchase record of dispensing the medicines/drugs in the absence of qualified person though the seized bill contains the initials of 'SK' which pertains to Surinder Kaur, who is the qualified person.

Learned counsel for the respondents, however, submits that the action has been initiated against the petitioner when it was found that it is repeatedly violating the law and in this regard referred to the order dated 17.9.2008 passed by the Licensing Authority in which the following reasons have been mentioned: -

"That your qualified person Ms. Surinder Kaur was not present in the shop all the time and sale of drug was being done by the unqualified person. Your reply regarding absence of qualified person that she comes from Chandigarh is a fake excuse as during inspection of dated 23.1.2008, one cash memo was seized on form-16, in which scheduled-H drugs were sold on prescription at Sr. No.501 to 524 but it did not bear signature of qualified person, which indicates that the sale of schedule-H drugs was being done in absence of qualified person. Moreover, all the time of inspection Shri Dinesh Kumar s/o Shri Girja Kumar proprietor of

the firm and Ms.Surinder Kaur, qualified person of the firm was not found present at the time of inspection and one Shri Achhar Pal s/o Shri Raj Pal was present all the time as incharge of the shop and found selling schedule-H drugs in absence of qualified person without issuing cash memos. Drugs licenses of Shri Achhar Pal as proprietor and qualified person of the firm M/s Gupta Medical Store, Kurali were cancelled previously vide this office letter No.Drugs (4) PB-05/14909 dated 11.10.2006 due to the contravention of provisions of Drugs and Cosmetics Rules, 1945 and habit forming drugs made by him. Thus you have violated Rule 65(2) & 65(3)(1) of the Drugs and Cosmetics Rules, 1945.

That all the time of inspection you have not shown the purchase records of drugs, which were seized on Form 16 as required under the provisions of Drugs & Cosmetics Rules, 1945. Thus you have violated Rule 65(4)(4) and 65(6) of Drugs & Cosmetics Rules, 1945.

That during inspection of dated 21.3.2008, unlabelled, de-blistered capsules claimed to be Spasmo Proxyvon were seized at sr. No.6 of Form 16 and these, misbranded capsule were found kept by you for sale and distribution and you violated provisions of Section 18(a)(i) of the Drugs & Cosmetics Act, 1940.

The perusal of records of your firm shows that your firm has been a habitual offender of the provisions of the Drugs & Cosmetics Act, 1940 and Rules made thereunder. On all the three times you have not kept/shown purchase records

of drugs, which were seized on Form 16. These drugs are misused for intoxication. It clearly indicates that you have been including in the sale and purchase of drugs containing Narcotic Drugs & Psychotropic Substance in their formulation without keeping their proper purchase & sale records as required under the provisions of Drugs & Cosmetics Rules, 1945.”

He has further submitted that a detailed order has been passed in appeal on 15.10.2009 and has referred to the finding recorded therein, which is also reproduced as under: -

“The large recovery of certain alleged to be habit forming drugs those are being misused by the addicts for their non medicinal use effect from the petitioner/appellate or from his agent/employee during the three consecutive inspections without possessing their valid purchase records and not maintaining the required records under the provisions of Rule 65 of Drugs & Cosmetics Rules. Further de-blistered 289 capsules seized from the conscious possession of the appellant or on is behalf were also meant for sale and distribution for their alleged misuse were adequate grounds for cancellation of licenses of the appellant. It is also established that Shri Achhar Pal who was acting incharge of the firm had made the alternative arrangement to run the retail sale drugs business in the name of Shri Dinesh Kumar, who was practically not acting as prop. as evident from the records, which seem to be a backdoor arrangement for running the chemist shop ruled out by Shri Achhar Pal. Further when the chemist shop is opened, it can be judged that sale is on. The firm has defaulted once but was found not conforming to

the provisions of Drugs & Cosmetics Act, 1940/Rules, 1945 on three occasions when inspections of the firm were made by the Drugs Inspector and to Licensing Authority. On all the three occasions neither the proprietor (in whose name license was issued) nor the qualified person in this case (Smt. Surinder Kaur) were present. Apart from this, sufficient opportunity was given to the above firm by issuing show cause notices and considering their replies before cancelling its Drugs License. In the present scenario, the sale of habit forming drugs in the absence of qualified person is not only danger to the lives of the people but also pushing the young generation towards intoxicants.

In view of the above said facts and circumstances, it is observed that the appellant firm found deeply indulged in the unethical purchase and sale of the habit forming drugs and other malpractices. Thereby no adequate grounds were found in the appeal and further I found no force in this appeal, I hereby order to dismiss the said appeal as per merit on the grounds mentioned above.”

After hearing learned counsel for the parties and examining the available record with their able assistance, I do not find any error in the impugned orders to tinker with the well considered finding recorded in the impugned orders by the respondents and hence, the present petition is hereby dismissed.

20.07.2016

Vivek

(RAKESH KUMAR JAIN)
JUDGE