

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Writ Petition No.12745 of 2014  
Date of Decision: April 25, 2017

M/s City Medicine Centre, Gandhi Nagar, Adampur, District Jalandhar

...Petitioner

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Salil Sablok, Advocate,  
for the petitioner.

Mr.Yatinder Sharma, Addl.A.G.Punjab,  
for the State.

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**AMIT RAWAL, J. (Oral)**

The petitioner has approached this Court under Article 226 of the Constitution of India for seeking quashing of the order dated 19.9.2013 (Annexure P-13) and orders dated 25.9.2007 (Annexures P-7 and P-8), whereby his Drugs Licenses bearing No.878-NB & 878-B for retail and 8764-OW & 8729-W for whole sale, have been suspended/cancelled.

Mr.Salil Sablok, learned counsel for the petitioner submits that the petitioner had been issued the aforementioned licenses in 1990 and had been renewed every year subject to the satisfaction of the respondent authorities. The renewal of licence is prescribed under Rule 63-A and 63-B of the Drugs and Cosmetics Rules, 1945 (for short "1945 Rules). On 18.12.2006, the petitioner submitted an application for renewal of the licenses. However, on 6.4.2007, respondent No.3-District Drugs Inspector,

Jalandhar inspected the business premises of the petitioner and as a result of the inspection, issued show cause notice dated 7.5.2007 (Annexure P-2) alleging contravention of the provisions of Drugs and Cosmetics Act, 1940 (for short “1940 Act”) and 1945 Rules on the ground that at the time of the inspection, the petitioner had not produced the purchase record of 14 types of drugs which were seized on Form 16 and alleged to have violated the provisions of Rule 65 of 1945 Rules, 3 types of allopathic drugs marked as “Physician Sample Not for Sale, were also seized and the refrigerator was not found to be in good condition. The petitioner was called upon to file reply to the show cause notice, failing which both retail and whole sale licenses may not be cancelled, within a period of 10 days. The petitioner is stated to have submitted reply Annexure P-3 dated 18.5.2007 and alongwith the same, also enclosed photo copies of certain vouchers/bills duly attested with regard to the purchase and stated that the sale representative had kept the samples and, therefore, the same could not have been produced.

The petitioner was flabbergasted to receive another show cause notice Annexure P-5 dated 16.8.2007, which was also on account of the contravention of the aforementioned Act and Rules, but it pertained to only Licenses No.878-NB & 878-B, i.e., retail, with regard to the contravention of having not displayed the drugs sale licenses in the shop premises; (ii) of having not produced purchase record of 32 types of drugs, which were seized on Form 16; (iii) also not maintained the single type of cash memo book; and (iv) shop premises was found in very dirty condition. The aforementioned notice was replied vide Annexure P-6 (at page 36 of the paper book) by giving detailed explanation of having shown the record, much less the licence had gone for framing as the frame was broken and

regarding the dirty condition of the shop, it was explained that it was owing to the rainy season.

The main thrust of the argument of the learned counsel for the petitioner is that vide notice Annexure P-7 dated 25.9.2007, both the retail and whole sale licenses have been suspended for a period of one month. However, vide Annexure P-8 of even date, on the basis of the subsequent inspection allegedly conducted on 16.8.2007, both the retail and whole sale licenses have been cancelled.

He submits that the petitioner has been prevented to reply, much less the authorities have not given show cause notice with regard to the whole sale licenses as the show cause notice Annexure P-5 is only in respect of the retail licenses and, thus, there is non-compliance of the principles of the natural justice. However, the petitioner availed the remedy of appeal before the Principal Secretary, Health & Family Welfare, Department, Punjab Chandigarh, but the same was dismissed and had approached this Court and on remand, impugned order Annexure P-13 dated 19.9.2013, has been passed, whereby the appeal has been dismissed. He further submits that simultaneously criminal proceedings were also initiated and the criminal court, after examination of the documentary evidence on record, vide judgment dated 31.8.2012, acquitted the petitioner and it has been found that the petitioner had been able to prove on record letter Ex.D23, receipt Ex.D24 and various other documents, i.e., the purchase bills Ex.D1 to Ex.D22. Thus, there can be no occasion for the appellate authority to have relied upon Annexure A-1, an order dated 7.4.2008, whereby the Directorate of Health Family Welfare, Punjab in the previous writ petition, i.e., CWP No/1456 of 2008 had intimated the Advocate General, Punjab

with regard to the enquiry held in respect of the bills submitted by the petitioner in support of the stand taken in the reply to the show cause notice and, thus, the authorities below ought to have applied Doctrine of proportionality. In support of his contention, he has relied upon the ratio decidendi culled out in **Sandeep Subhash Parate Versus State of Maharashtra and others, (2006) 7 Supreme Court Cases 501** and thus, urges this Court for setting-aside the impugned orders.

Per contra, Mr.Yatinder Sharma, learned Addl.Advocate General, Punjab, representing the State submits that the petitioner is a habitual violator of the Act and Rules, which is revealed from Annexures R-7, R-8 and R-9 as on three occasions, his retail licenses have been suspended, i.e., on one occasion in 1994 and on two occasions in 2003 by taking into consideration the provisions of sub-section (c) of Section 66 of the Act. The alleged act was continuing and, therefore, the order cancelling the licenses, both retail and whole sale, is wholly justified and legal and, thus, urges this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the argument of Mr.Salil with regard to the cancellation of the licenses qua “whole sale” bearing No.8764-OW and 8729-W appears to be justified and regarding the other licenses, i.e., retail cannot be faulted with.

Before I could give my reasons, I deem it appropriate to extract the contents of the letter dated 7.4.2008 (Annexure A-1), i.e., the enquiry conducted by the State Drugs Controlling and Licensing Authority, Punjab having submitted to the Director, who further communicated to the Advocate General, Punjab, Chandigarh. The same reads as under:-

*“From*

*Directorate of Health & Family Welfare, Punjab  
Parivar Kalayan Bhawan, Sector 34-A, Chandigarh.*

*To*

*The Advocate General Punjab,  
Chandigarh.*

*Subject: Civil Writ Petition No.1456 of 2008 City Medicine  
Centre, Adampur, Jalandhar V/s State-Regarding.*

*Respectfully it is submitted as under:-*

*That the case mentioned in the subject above was heard on 31-3-2008 by the Hon'ble Justices of Punjab and Haryana High Court and the petitioner was directed to submit the purchase records of drugs seized on 6-4-2007 and 29-6-2007 from the petitioner shop, which was the basis of suspension and cancellation of the drugs sale licences of the petitioner under the provisions of Drugs & Cosmetic Act 1940. As per directions of Hon'ble Punjab & Haryana High Court, the petitioner Sh.Tarun Kumar has submitted the self attested photocopies of purchase records of drugs in this office through his counsel Sh.Manish Kumar Rampal, Advocate on 2.4.2008 and the same were got verified from the inspectorate staff of this department. The details of purchase records and their verification reports are as under:-*

*Regarding inspection dated 6-4-2007:*

*The petitioner has submitted attested copies of purchase records for the 8 types of allopathic drugs out of 11 types in question but on verification it is established that the petitioner has submitted photocopy of purchase invoice No.778 dated 10.3.2007 claimed to be issued by M/s Harry Pharmaceuticals, Dhuri Road, Sangrur for two types of drugs seized at Sr.No.2 & 3 of seizure memo during inspection dated 6-4-2007, the said purchase invoice on verification has been proved to be bogus because no such firm has been existing in District Sangrur. The licence No.20-B 14280-OW and 21-B 14097-W shown in favour of M/s Harry Pharmaceuticals on the said*

*invoice, belongs to M/s SK Medical Agency, Fauji Market, Moga. Hence the suspension of the licences of the said firm vide Annexure No.P-7 stands justified and was as per law.*

*Regarding inspection dated 29-6-2007:*

*The petitioner has given in writing that he could not submit copies of purchase records for 4 types of drugs amongst the 32 types seized during inspection. The petitioner has submitted attested photocopies for the purchase of rest of the drugs but on verification it is established that the petitioner has submitted photocopy of purchase invoice No.2948 dated 17.5.2007 claimed to be issued by M/s S.V.Medical Agencies, Pindi Street, Ludhiana for six types of drugs seized at Sr.No.3, 4, 5, 8, 9 and 15 of seizure memo during inspection dated 29.6.2007, the said purchase invoice on verification has been proved to be bogus because no such firm has been existing in District Ludhiana. The licence No.20-B-15127-OW and 21-B-14942-W shown in favour of M/s S.V.Medical Agencies on the said invoice, belongs to M/s Tara Medical Agency, 305, Pindi Street, Ludhiana.*

*It is further established that the petitioner has submitted photocopy of purchase invoices No.306 dated 20-11-2006 and 310 dated 21-11-2006 claimed to be issued by M/s People Medical Agency, Pindi Street, Ludhiana for eight types of drugs seized at Sr.No.14, 16, 17, 18, 19, 21, 22 and 29 of seizure memo during inspection dated 29-6-2007, the said purchase invoice on verification has been proved to be bogus because no such firm has been existing in District Ludhiana. The licence No.16228-OW (Form 20-B) shown in favour of M/s People Medical Agency on the said invoice, belongs to M/s New Bansal Medicose, Near Modi Mills, Sunam, Sangrur and licence No.15903-W (Form 21-B) shown in favour of People Medical Agency on the said invoice, belongs to M/s Rajat Medicos, V.P.O.Garhshankar, Hoshiarpur. Hence the cancellation of the licences of the said firm vide annexure No.P-8 stands justified and as per law.*

*It is therefore requested that the above said facts may be submitted before the Hon'ble Punjab and Haryana High Court as it is established that the petitioner has tried to mislead by submitting bogus purchase records for 14 types of allopathic drugs in question relating to inspection dated 29-6-2007 and for 2 types of allopathic drugs relating to inspection dated 6.4.2007.*

*State Drugs Controlling And  
Licensing Authority, Punjab,  
Chandigarh.”*

On perusal of the aforementioned enquiry with regard to the inspection conducted on 6.4.2007 and 29.6.2007, it has been found that photo copies of the invoices produced by the petitioner were found to be purchased from a firm, which was not in existence. In fact, those licenses mentioned in the invoice were in the name of the other agency. Thus, in my view, the aforementioned report relied upon by the appellate authority in cancelling/suspending “retail licenses” is wholly justified and cannot be faulted with.

However, as regards the “whole sale licenses”, I am of the view that the respondents have not complied with the principles of natural justice as the petitioner has not been issued show cause notice with regard to the whole sale licenses. For the sake of brevity, show cause notice dated 16.8.2007 (Annexure P-5) is to be extracted, which reads as under:-

*“From*

*Directorate of Health & Family Welfare, Punjab  
Parivar Kalayan Bhawan, Sector 34-A, Chandigarh.*

*To*

*M/s City Medicine Centre  
Main Road, Adampur, District Jalandhar.*

*Sub:- Contravention under Drugs & Cosmetics Act/Rules Show*

*Cause Notice.*

*It has been reported to this office by the Drugs Inspector, Jalandhar that your sales premises was inspected on 29.06.2007 and observed that you have made following contravention of the provisions of the Drugs and Cosmetics Act 1940 and Rules 1945 made there under:-*

- 1. You have not displayed the drugs sale licenses in your shop premises, thus you have violated condition no.1 of the licenses issued on Form 20 & 21.*
- 2. You have not shown/kept the purchase record of 32 types of drugs which were seized on Form 16. Thus you have violated Rule 65 (4) (4) & 65(6) of the Drugs & Cosmetics Rules, 1945.*
- 3. You have maintained the single type of cash memo book and last bill issued vide bill No.18122 dated 16.06.2007 and no sale record kept/shown after 16.06.2007. Thus you have violated Rule 65(3)(1), 65(4)(1) & 65(6) of the Drugs & Cosmetics Rules, 1945.*
- 4. Your shop premises was found in very dirty condition.*

*Therefore, I Bhag Singh, Drugs Inspector, Punjab, being a Licensing Authority, appointed under Rule 59 (1) of the said rules serves you with this show cause notice under Rule 66 (1) that why your Licenses No.878-NB and 878-B may not be suspended/cancelled? Your reply must reach in this office within 10 days of receipt of this letter, otherwise an ex-parte decision will be taken against you.”*

The petitioner was called upon to file reply only with regard to the retail licenses bearing No.878-NB & 878-B and not the whole sale licenses. However, on perusal of the impugned order Annexure P-8, both the licenses have been cancelled. The operative part of the order Annexure P-8 reads thus:-

*“Hence, you being a habitual offender of the Drugs & Cosmetics Rules, 1945 and considering the means to check*

*widespread drugs menace, therefore your retail sale drugs licenses bearing no.878-NB & 878-B and wholesale drugs licenses bearing No.8964-OW & 8729-W are hereby cancelled with immediate effect. You are directed not to conduct any sale and purchase of drugs under these licenses.”*

Thus, in my view, the petitioner has not been given an effective opportunity to respond to the alleged show cause notice with regard to the whole sale licenses No.8764-OW and 8729-W. Thus, the act of the respondents is wholly erroneous and arbitrarily, much less without jurisdiction and this fact ought to have been noticed by the appellant authority, but having been swayed away with the report, did not ponder upon the same.

Resultantly, the order under challenge with regard to the retail licenses is hereby upheld and qua whole sale licenses bearing No.8964-OW and 8729-W is hereby set-aside.

Writ petition stands partly allowed.

**April 25, 2017**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**