

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5263 of 2017

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Arvind Kumar Singh, S/o Sri Chitranjan Singh, Resident of Village- Chaturpur,
P.O.- Gopalpur, P.S.- Nayagaon, District- Saran.

.... Petitioner.

Versus

1. The State of Bihar represented through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health & Family Welfare, Government of Bihar, Patna.
3. The Additional Secretary, Department of Health & Family Welfare, Government of Bihar, Patna.
4. The State Drug Controller, Bihar, Patna, Health Department, 4th Floor, Vikas Bhawan, New Secretariat, Patna.
5. The Assistant Drug Controller-cum-Licensing Authority, Saran, Chapra.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Avinash Kumar, Adv.

Mr. Krishna Chandra, Adv

For the State :

Mr. Ramadhar Singh-GP25

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-06-2018

The present writ petition has been filed for quashing the letter No. 245(15) dated 02-03-2017 issued under the signature of Additional Secretary, Health Department, Bihar, Patna to the extent which prohibits the authorities of the Department in accepting the application for grant of New license for Sale/Manufacture of drugs/medicines till the start of online system; and for connected reliefs.

2. The short facts of the case according to the petitioner are that being desirous of opening his own medical shop, he arranged all the documents required under Rule 59(2) of the Drugs and Cosmetics



Rules, 1945 for grant of new license to sell, stock, exhibit or offer for sale or distribute drugs other than specified in Schedule X. It is further stated that he visited the office of the Assistant Drug Controller-cum-Licensing Authority (respondent No. 5) who refused to accept the application form in view of the decision contained in the impugned letter dated 02.03.2017 issued by the Additional Secretary, Health Department, Bihar, Patna (respondent No. 3) containing a direction not to accept applications for grant of new licences till start of online system for receiving such applications. It is submitted that such direction is *de hors* the statutory provisions and grant of licence cannot be denied on the ground as sought to be cited by the respondents.

3. The counter affidavit and supplementary counter affidavit filed on behalf of the respondents merely state that steps are underway for implementing the online system and until the same is made operational, fresh licences cannot be granted.

4. This Court had granted time to the respondents by orders dated 08-01-2018 and 19-03-2018 to inform this Court by filing supplementary counter affidavit with regard to the period within which the process of accepting applications online for grant of new licences would be completed. Despite lapse of almost six months, however, Thousand supplementary counter affidavit has not been filed. Learned counsel for the respondents has also not offer any specific time frame in this regard today.



5. Having heard learned counsel for the petitioner and considering the materials available on record, this court is inclined to interfere in the matter.

6. The matter of grant of licence was dealt with by this court in its order dated 07-12-2001 passed in CWJC No. 10633 of 2001 and analogous cases reported in *AIR 2002 Patna, 57 (M/s Sagar Medical Hall & Ors. Vs The State of Bihar & Ors.)* The relevant provisions of the Drugs and Cosmetics Act, 1940 and the Rules made thereunder were duly examined and the matter was disposed of with the following observations —

“5. From a plain reading of the aforesaid rule, it is manifest that before the grant of licence or its renewal, the authority empowered to grant the licence or to renew is, to be satisfied that the premises in respect of which the licence is to be granted or renewed, are adequate, equipped with proper storage accommodation for preserving properties of drugs to which the licence applies and are in charge of a person competent to supervise and control the sale, distribution and preservation of drugs. Thus, the conditions which are required to be satisfied for grant of licence or its renewal is provided under the Rules is self. The Rules nowhere confer on the licencing authority the power to refuse or renew the licences, on the ground other than what has been provided therein. Here in the present case, grant and renewal of licence has been refused only on the ground that as a matter of policy, the State Government has temporarily decided not to grant licence on the



ground that number of shops available in the State is sufficient to meet the demand of the public.

6. As stated earlier, the grant and renewal of drug licence is governed by the Rules and it nowhere provides that the licence can be declined or renewal can be refused on the ground that in the opinion of the State Government, the number of shops are sufficient to meet the demand of the public. I am of the opinion that when grant or renewal of licence is governed by the statutory rule, decision of such a question has to be governed by the provisions of the Rules and executive decision taken by the State Government, cannot override the same. Here in the present case, conditions for grant and renewal of licence have been provided under the Rules but the decision taken by the State Government overrides the same, in my opinion, same is also not, permissible.

7. On fact also I am not impressed by the stand taken by the State. On account of literacy on health, education as also the people becoming health conscious, they need drugs and for that drug shops are necessary. Growth of drug shops is to cater to the needs of demanding public. Even if I accept the stand of the respondents that many of drug shops are not in a position to meet the establishment cost, they do so at their own risk. In case, to generate, profit, they attempt to sell spurious drugs, there is entire department of the State which is available to control that. Inefficiency in their part to control such menace, if at all, shall not entitle the respondents to stop the grant or renewal of licence altogether. I am reminded of a story in which, when a king found that there were large number of thefts committed in his Kingdom, he ordered that no citizen shall come out of their houses. This is precisely the stand of the respondents in the



present case. In case, the respondents apprehends sell of spurious drugs because of large number of shops, they must tighten their belt and devise ways and means to stop the same. In sum and substance, the plea of the respondents is plea of inefficiency. In my opinion, this novel devise of refusing to grant licence or renew the same being not permissible in law, cannot be sustained. For the reasons stated, the decision of the State Government dated 03-04-2001, is quashed.

8. As the grant of licence and the renewal have been refused to the petitioners only on the ground or the decision of the State Government which has been set at naught, I direct the licensing authority to consider the applications filed by the petitioners for grant/renewal of licence in accordance with law, ignoring the decision of the State Government referred to above. It is made clear that I have not gone into the question as to whether petitioners, are entitled for grant or renewal of the licence."

7. In the above view of the matter, it will be evident that grant of licence can be denied or refused only in accordance with the statutory provisions and not on extraneous grounds as sought to be done in the present case. The action of the respondents in refusing to grant licence merely on the ground that the online system for accepting applications was in process, cannot be a valid reason for not accepting the application of the petitioner for grant of licence. Considerable time has already elapsed and no time frame has been indicated for implementation of the online system. The respondents cannot take



advantage of delay in the process of the online system to deny the right of the petitioner to carry on with his trade.

8. In the above circumstances, the impugned letter No. 245(15) dated 02-03-2017 issued by the Additional Secretary, Health Department, Bihar, Patna (Annexure-2) insofar as concerns the petitioner is quashed. The Assistant Drug Controller-cum-Licensing Authority, Saran, Chapra (Respondent No. 5) is directed to accept the application of the petitioner for grant of new licence for sale/manufacture of drugs/medicines within two weeks from the date of receipt/production of a copy of this judgment. If any such application is filed, the same shall be considered by respondent no. 5 in accordance with law.

10. The writ petition stands allowed.

(Vikash Jain, J)

A.K.V./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03 .07.2018
Transmission Date	NA

