

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4422 of 2018

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Silicon Healthcare Private Limited, Address- M-17, Shri Krishna Nagar, Road No. 1, Police Station- Kotwali, District- Patna, Pin No.- 800001 through Rajesh Kumar (Director), Son of Ram Kripal Prasad, Resident of M - 17, Sri Krishna Nagar, Road No. 1, Police Station- Kotwali, District- Patna, Pin No.- 800001.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The State Drugs Controller, Bihar, Patna cum Chief Licensing Officer Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate

For the Respondents : Mr. Anujit Sinha, AC to Pr. AAG2

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-05-2018

Heard learned counsel for the petitioner as well as learned
counsel for the respondents.

2. The present writ petition has been filed for the following
reliefs –

“(i) For quashing of the order communicated vide letter contained in memo No. 857 (15) dated 7-9-2017 issued by the State Drugs Controller, Bihar, Patna whereby sale, purchase, stock, use and distribution of medicines/formulations of Levofloxacin and Ofloxacin manufactured and meant for Pediatric use has been banned and it has been asked to all the Assistant Drugs Controller, Bihar and Drug Inspectors of Bihar to take action in accordance with rule.

(ii) For holding that the issuance of impugned order contained in Memo no. 857 (15) dated 7-9-2017 issued by the State Drugs Controller, Bihar, Patna is wholly



without jurisdiction in view of the provisions contained in section 26A of the Drugs and Cosmetics Act, 1940.

(iii) For any other relief for which the petitioner may be deemed entitled to.”

3. Learned counsel for the petitioner makes a short submission to assail the impugned order dated 07.09.2017 to the effect that respondent authority could not have imposed restrictions and constraints as done, in absence of a notification in the Official Gazette which is a mandatory requirement under Section 18 of the Drugs and Cosmetics Act, 1940, which is extracted below –

“Prohibition of manufacture and sale of certain drugs and cosmetics – *From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf –*

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute –

[(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

[(ii) any cosmetic which is not a standard quality, or is misbranded, adulterated or spurious;]

[(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities, thereof];]

(iv) any drug which by means of any statement, design or device accompanying it or by any other means,



purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

[(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]

(b) [sell, or stock or exhibit or offer for sale,] or distribute any drug[or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions, of a license issued for such purpose under this Chapter ...”

4. Learned counsel for the respondents appears and submits on the strength of the counter affidavit that medicines/ formulations of Levofloxacin and Ofloxacin manufactured for pediatric use were found injurious for health and as such, the State Drug Controller, Bihar, Patna issued letter contained in memo no. 857(15) dated 07.09.2017 addressed to all the Assistant Drug Controllers as well as Drug Inspectors with instruction to stop immediate sale, purchase, stock, use and distribution for the same.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court



finds merit in the writ petition. A bare perusal of the provisions of Section 18 of the Drugs and Cosmetics Act, 1940 makes it abundantly clear that the prohibitions and restrictions of the nature sought to be imposed in terms of the impugned letter mandatorily require an appropriate notification in the Official Gazette by the State Government in that behalf. Nothing has been brought on record by the respondents to show that any such notification has been issued by the State Government.

6. In the above circumstances, the impugned letter contained in memo No. 857 (15) dated 07.09.2017 (Annexure-2) is hereby quashed. Needless to say, the State Government shall always be at liberty to issue the necessary notification in the Official Gazette in that regard, if so advised.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.05.2018
Transmission Date	N.A.

