

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1399 of 2019

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M/s Saurav Medical Hall, Proprietor Surendra kumar Pandey, aged about 54 yrs old, male, Son of Late Ram Ayodhya Pandey, Premise situated at Mitra Mandal Colony, Saket Vihar, Anisabad, P.O- Anishabad P.S- Phulwari sharif District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, New Secretariat , Patna
2. The Appellate Authority-Cum-Principal Secretary, New Secretariat, Baily Road Patna
3. The State Drug Controller-Cum- Chief Licensing Authority, New Secretariat Bihar Patna.
4. The Assistant Drug Controller, Drug Control Administration, Patna Fourth Floor, NMCH, Campus Kankarbagh Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shams Alam, Adv.
For the Respondent/s : Mr.Pankaj Kumar (Sc12)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-01-2019 This writ application has been preferred for setting-aside the order dated 25.10.2018 passed by the Assistant Drug Controller, Patna canceling the license of the petitioner for running the medicine shop as also for setting-aside the order dated 03.01.2019 passed in Appeal Case No. 24 of 2018 by the Appellate Authority-Cum-Principal Secretary, Department of Health, Government of Bihar, Patna whereby the Appellate Authority has modified the order of the Assistant Drug Controller as contained in Memo No. 669 dated 25.10.2018 and has by modifying the said order substituted the order of cancellation of license by an order of suspension for a period of



90 days from the date of issuance of letter.

Mr. Shamas Alam, learned counsel appears on behalf of the petitioner and prays for time on the ground of absence of learned Senior Counsel who has to argue the matter. This Court has already published a notice in the daily cause list itself requesting the learned Advocates to inform the other side and the Bench Officer of this Court on the previous day by 04:15 P.M. if there is any difficulty in arguing the matter on the next date but in this case the direction of this Court and the request made in the daily cause list has not been taken care of, therefore, this Court is not inclined to grant any adjournment.

Learned counsel for the State is present.

This Court has perused the statements made in the writ application and the grounds raised therein. It appears from perusal of the record that the shop premise of the petitioner was inspected on 06.10.2018. In course of investigation several irregularities were found. The Drug Inspector demanded purchase invoice of certain drugs which could not be made available by the petitioner on the ground that the same was not issued. Regarding some of the drugs, the Inspecting Team demanded purchase invoice but that was also not made available. One physician sample was found in the premise and



the Investigating Team made seizure list of certain medicines, a copy of the investigation report is available at Annexure '1' to the writ application. One of the statements made in the writ application is that the Assistant Drug Controller issued show cause notice to the petitioner vide Memo No. 663 dated 13.10.2018 but the same was not received in time and, therefore, the petitioner was not in a position to submit his reply to the said show cause notice. It is one of the submissions of the petitioner that the license was canceled in haste vide Memo No. 669 dated 25.10.2018.

The petitioner has placed on record the track consignment showing that the notice to show cause was dispatched to the petitioner on 23.10.2018 and the same has been delivered on 25.10.2018.

From perusal of the memorandum of appeal a copy of which has been brought on record, it appears that the petitioner had raised this issue by making specific averment in Paragraph 5 of the memorandum of appeal. However, the Appellate Authority has not at all considered the same.

In the opinion of this Court, the appellate order as well as the order as contained in Memo No. 669 dated 25.10.2018 passed by the Assistant Drug Controller, Patna



Municipal Area, Patna, both suffer from violation of principles of natural justice and as such those are liable to be set-aside and hence set-aside. Since this Court has found that the order passed by the Assistant Drug Controller, Drug Control Administration, Patna (respondent no.4) was passed without giving an appropriate opportunity to the petitioner to show cause, the respondent no. 4 shall now issue a fresh show cause notice to the petitioner giving him adequate opportunity to submit a reply and thereafter he will pass an appropriate reasoned order thereon in accordance with law.

The whole exercise shall be completed within a period of 60 days from the date of receipt/production of a copy of this order.

This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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