

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6031 of 2019

=====

M/s Shree Maa Enterprises, First Floor, Nirmala Complex, F.B.S. Road, P.S-Kotwali, District-Gaya, engaged in Wholesale and Distribution of Drugs and being represented through its proprietor Rahul Raj, Male, Age about 38 years, S/o Sri Himanshu Kishore Sinha, resident of New Colony, Kalibari, P.S-Civil Lines, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
2. The State Drug Controller, Directorate of Health Services, Bihar, Patna.
3. The Assistant Drug Controller-cum-Licensing Authority, Drug Control Administration, Gaya.
4. The Drug Inspector, Sherghati Sub-Division, Gaya

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Avinash Kumar, Adv. Mr.Krishna Chandra, Adv.
For the Respondent/s	:	Mr. N.P. Yadav, SC 23.. Vijaya Laxmi Srivastava, AC to SC 23.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 01-04-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

In the nature of the order proposed to be ordered in the present writ application, no counter affidavit is required to be called.

Petitioner is aggrieved by the order as contained in Memo No.188 dated 28.02.2019 passed by the Assistant Drug Controller-cum-Licensing Authority, Drug Control Administration, Gaya by which the licence of the petitioner to wholesale and distribute the drugs has been suspended for a



period of 90 days from the date of receipt of the letter.

Learned counsel for the petitioner submits that on the date of inspection of the shop, the Assistant Drug Controller-cum-Licensing Authority noticed that the petitioner had sold two medicines to a medical shop which was having a restricted licence only. Learned counsel submits that the petitioner had already taken back those medicines from the said purchaser and then the petitioner being a wholesaler by virtue of Rule 65 (2) of the Drugs and Cosmetics Rules, 1945, the embargo of sale of those medicines to a restricted licensee could not have been imposed against the petitioner. It is submitted that the rigours of sub-rule (5) of Rule 65 could have been applied by virtue of sub-rule (9) only against the retailers and not against a wholesaler.

At this stage, it is pointed out that the petitioner has challenged the impugned order by way of a statutory appeal provided under Rule 66 (2) of the Rules, 1945. It is submitted that the appeal is pending consideration but is not likely to be heard in the near future. It is submitted that because of the suspension of the licence, the petitioner's shop is lying closed and he is deprived of running the shop during pendency of the appeal.



On the other hand, learned counsel representing the State submits that the petitioner has also preferred a statutory appeal and, therefore, remedy of the petitioner lies before the appellate authority.

Having heard learned counsel for the petitioner and learned counsel representing the State, this Court directs the Principal Secretary, Department of Health, Government of Bihar to consider and dispose of the appeal preferred by the petitioner within a period of 60 days from the date of receipt/production of a copy of this order. The petitioner may also file an application seeking stay of the impugned order within a period of 15 days from today. If such an application is filed, the appellate authority shall consider and dispose of the application for interim relief within a period of 30 days from today. Till disposal of the application, there will be an interim stay of the impugned order.

This writ application stands disposed of, accordingly.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

U			
---	--	--	--

