

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22666 of 2018

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M/s Rastriya Advertising Agency represented by Arvind Kumar, S/o Late Ram Narayan Prasad, Resident of Church Road Christian Quarter, P.S.- Bettiah, District- West Champaran, Presently Residing at Sai Carnation Apartment, Kankarbagh Main Road, Bahadurpur Gumti, Near Indian Oil Petrol Pump, Patna, P.S.- Kankarbagh, Dist.- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Health, Government of Bihar.
2. The Appellate Authority the Minister of Health, Govt. of Bihar, Patna.
3. The Principal Secretary, Health Govt. of Bihar.
4. The State Drug Controller-cum-Chief Licensing Authority, New Secretariat, Patna.
5. The Assistant Drug Controller, Drug Control Administration Patna, 4th Floor, N.M.C.H. Campus, Kanka
6. The Drug Inspector P.M.C.H. Campus, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kr. Singh, Advocate Mr. Vaibhav Vikram Singh, Advocate Ms. Tulika Singh, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar, AC to PAAG2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 21-11-2019 Heard learned counsel for the petitioner and

learned counsel representing the State.

Petitioner in the present case is aggrieved by and dissatisfied with the order dated 14.09.2018 passed by the Appellate Authority in Appeal No. 12 of 2018 by which the Appellate Authority has refused to interfere with the Memo No. 394 dated 29.05.2018 issued by the Assistant Drug



Controller, Drug Control Administration, Patna notifying cancellation of the drug licence of the petitioner.

Learned counsel for the petitioner has placed before this court the impugned orders and has submitted that in fact neither the Licensing Authority nor the Appellate Authority has been able to consider the show cause of the petitioner. Learned counsel has drawn the attention of this court towards the show cause, as contained in Annexure '4' to the writ application and submits that a bare reading of the same would show that the Licensing Authority has not at all gone into the submissions of the petitioner and in the impugned order cancelling the licence he has merely recorded his own opinion. In this connection, learned counsel has while replying to the stand of the respondents submitted as follows in paragraph Nos. 9, 10 & 11 of the rejoinder:

“9. That in reply to the statement made in Para 6 of the Counter Affidavit it is stated that it is true that the show cause for certain deficiency/mistakes were issued on 19.04.2018 (Annexure-3, page-30) and the Petitioner submitted his show cause on 16.05.2018(Annexure 4, page 31-32) stating therein and clarifying the objections to the effect that the medicines which were found on the rack were kept



there because even after purchasing the same, the customer did not pay as he was not holding sufficient money and as such it was a usual minor mistake by the staff and in so far as the second objection is concerned, it has been clearly stated that Pharmacopoeil reference "IP" should have been written on the strip and the outer cartoon but the same obviously is related with the drug manufacturer. The third objection is that certain branded medicines were found in the shop of the petitioner and it was clarified in Para 3 of the show cause (page-31) that those medicines are generic medicines and they are not Branded Medicines which is evident from the difference in the MRP of the medicines and accordingly the purchase bill were produced before the Respondent Assistant Drug Controller. It is asserted that those six medicines, which are claimed to be Branded Medicines, as a matter of fact are generic medicine as no branded medicine is manufactured by any company in the name of BEDEX FORT, AZIPRO 500, MONTOVENT LC, RZOLE-DSR, MEGAZOLID-IV 300 MI, ITROMED-200.

10. That it is stated and brought to the notice of this Hon'ble Court that in the Branded Medicines, there is very little discount given by the manufacturing company, whereas in the Generic Medicines, there is a huge discount given by the Manufacturing Company as it is also evident from the comparison of the receipt of the generic medicine and the Branded Medicine, as for example, the medicine named Bedex FORT Cap in the Generic Medicine, the MPR is fixed at Rs. 25.00 but it is sold at Rs. 8.93 which is about 1/3 of the actual price whereas in the Branded Medicine, if the MRP of any medicine is fixed at Rs. 56.60, then it is sold at the rate of Rs. 40.43 giving rebate of about 30% only which is



evident from the invoice issued by Bihar Traders.

11. That so far as the objection with respect to duration of the agreement is concerned, it was stated in the show cause and made clear that as per the decision taken by the Bihar Health Society as communicated through Sri Sanjay Kumar Singh, IAS under Memo No. 2835 dated 09.04.2014 and as per the clause 9, the duration of the agreement was extended till further order (Annexure 1, page 24-26).

Learned counsel for the State has submitted that the Licensing Authority as well as the Appellate Authority have passed the impugned orders after giving appropriate opportunity of hearing to the petitioner.

In the counter affidavit, however this court does not find any answer to the submissions of the petitioner that what were offered by him by way of his defence vide Annexure '4' to the writ application have been duly considered.

Since this court comes to a conclusion that the Licensing Authority as well as the Appellate Authority have not at all discussed and gone into the defence of the petitioner as contained in Annexure '4' to the writ application, the impugned orders are liable to be set-aside on this ground alone.

The cancellation order as contained in Annexure



‘5’ and the Appellate Order available at Annexure ‘9’ to the writ application are hereby set-aside.

The matter is remitted to the Licensing Authority i.e. Assistant Drug Controller, Drug Control Administration, Patna (respondent no. 5) for a fresh consideration of the matter after giving an appropriate opportunity of hearing to the petitioner. If so advised, the petitioner may file any additional submissions/documents within a period of two weeks from today before respondent no. 5 and the whole exercise towards fresh consideration will be completed by respondent nos. 5 within a period of four months from the date of receipt/production of a copy of this order.

Till then, the licence of the petitioner shall stand restored.

The Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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