

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15795 of 2019

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M/s Micro Labs Ltd. Represented by Janardhan Prasad male aged about 44 yrs. old S/o Sri Mahanth Mehta Premises situated at Pushpa Ware House Pahari More, N-H- 30, P.S.- Agamkuan, Distt.- Patna- R/o Vill.- Shambhua Pur Shambhopur, P.S.- Chanpatia District West Champaran.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. That State Drug Controller-Cum- Chief Licensing Authority New Secretariat, Bihar, Patna.
3. The Assistant Drug Controller Patna Municipal Corporation Area N.M.C.H Campus Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ram Shankar Das, Advocate
For the Respondent/s : Mr.Manoj Kr. Yadav, A.C. to GA10

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 18-10-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

Learned counsel for the petitioner submits that in this case when the petitioner being aggrieved by the order of the Licensing Authority to place his licence under suspension, prefer an appeal before the Appellate Authority in terms of Rule 66(2) of the Drugs and Cosmetics Rule, 1945 (hereinafter referred to as the “Rule of 1945”), the appellate authority has while rejecting the appeal of the petitioner converted the order of suspension in one of order



of cancellation of licence. It is submitted that the appellate authority being a creature of statute has not been conferred upon the power to convert the punishment in one of cancellation of licence and hence the appellate authority has committed a jurisdictional error.

Learned counsel for the State submits that the appellate authority has got inherent power to convert the order of punishment by cancelling the licence of the petitioner and such inherent power is not required to be traced in any statutory provision.

In course of hearing, learned counsel for the State could not place before this court any provision under the Drugs and Cosmetics Act, 1943 read with Rule of 1945 to show that the appellate authority has power to convert the order of the licensing authority by enhancing the punishment.

Having heard learned counsel for the parties and on perusal of the records, this court finds that in absence of any specific power conferred upon the appellate authority under the statute he could not have converted the order of punishment of licence in one of in order of cancellation of



licence. It is well settled in law that a creature of statute must derive his power from the statute itself. Learned counsel for the State has not been able to place even any provision showing any inherent power vested with the appellate authority to convert the order of suspension in one of order of cancellation. This being the position.

The appellate order dated 17.07.2019 which has been sent to the petitioner vide memo no. 889(15) dated 24.07.2019 (Annexure '10' to the writ application) is hereby set-aside. The matter is remitted to the appellate authority for a fresh consideration of the appeal of the petitioner and to pass a reasoned order upon consideration of the grounds taken by the petitioner.

It will be open for the petitioner to take all such pleas which are available to him before the appellate authority.

This Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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