

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18529 of 2019

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M/s Gaya Electronics, K.P. Road, P.O.- GPO, P.S.- Kotwali, District- Gaya, engaged in Sale and Distribution of Drugs and being represented through its proprietor Tarun Kumar, aged about- 39 years, Gender- Male, S/o- Sri Bipendra Kumar, resident of K.P. Road, Gandhi Chowk, P.O.- GPO, P.S.- Kotwali, District- Gaya.

... .. Petitioner

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-cum- Chief Licensing Authority, Directorate of Health Services, Bihar, Patna.
3. The Assistant State Drug Controller-cum- Licensing Authority, Durgs Control Administration, Gaya.
4. The Drug Inspector, Drugs Control Administration, Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Avinash Kumar, Advocate
For the Respondent/s : Mr.Aditya Nath Jha, A.C. to SC-18

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 25-10-2019 Heard learned counsel for the petitioner and

learned counsel for the State.

Pursuant to the order dated 23.10.2019 passed by this court, learned counsel for the State has produced the departmental file in which Appeal Case No. 19 of 2019 has been dealt with. This court has with the assistance of learned counsel for the State perused the entire records.

It appears that the Appeal in this case was



preferred on 01.07.2019. On the petitioner's copy the concerned Section (Distribution Section) of the Health Department, Government of Bihar has acknowledged the receipt of the memorandum of appeal on 01.07.2019. It however appears that after the memorandum of appeal was made available to the concerned Assistant in the Department, no order-sheet showing date of registration of the appeal has been maintained.

On 11.07.2019 the Assistant in the department initiated the note and after recording that the appeal has been presented in the department on 03.07.2019, which is factually incorrect took a view that the appeal should have been preferred within a period of 90 days in terms of the Rule 66(2) of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 'Rules of 1945'), since it was presented after 145 days, he advised that the appeal is not fit for hearing. Once this note was moved by the Assistant, the Section Officer of the department did a formality by sending the file to the State Drug Controller and the State Drug Controller who is in fact the Chief



Licensing Officer against whose order an appeal lies under Rule 66 (2) of the Rules of 1945 before the Principal Secretary, reiterated the views of the Assistant and after deducting 90 days limitation period he also advised that the appeal is not fit for hearing and recommended that the Principal Secretary – cum – Appellate Authority may be informed of the circumstances and order may be passed by him accordingly. He sent his note to the Joint Secretary and the Joint Secretary made a query as to whether or not there is a provision for condonation of delay and in case it is there whether or not an application for condonation of delay has been filed, on this query again the State Drug Controller informed the Joint Secretary with regard to Rule 66(2) of the Rules of 1945 and advised him to inform the Principal Secretary -cum – Appellate Authority accordingly. Thereafter, the Joint Secretary put his note to the Principal Secretary and advised him to approve the advise rendered by the State Drug Controller at page ‘2 of the Office Notes marked ‘ka’.



The Principal Secretary who is the Appellate Authority under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the 'Act of 1940') read with the Rule of 1945 did the only job endorsing the views of the Joint Secretary in the following words:-

"तदनुकूल आदेश प्रारूप दे
संजय कुमार
ह 0/- 19.07.2019"

Thereafter, the draft of the letter was prepared and the same was placed before the appellate authority again with the advise of the State Drug Controller and then the Appellate Authority approved the draft letter which was accordingly issued by him. It is, this letter issued by the Appellate Authority which is impugned in the writ application.

Learned counsel for the State has at the outset submitted before this court that there seems to be some mistake in processing of the file and all this has happened because in the memorandum of appeal there was no statement that the appeal was being preferred within the limitation period from the date of receipt of the copy of



the impugned order. He has, however taken a stand that, in any case a date of hearing was required to be fixed in the matter.

Learned counsel has hasten to add that notwithstanding that the Appeal was preferred after the statutory period of limitation, the Assistant in the department was certainly not right in advising the statutory Appellate Authority that the appeal is not fit for hearing.

Learned counsel for the State has taken a plea that because no date of hearing was fixed in the matter and the order has been passed without giving an opportunity to the petitioner to answer the queries, if any with regard to the issue of limitation, the impugned order may be set-aside and the Appellate Authority may be directed to hear the appeal after giving an opportunity of hearing to the petitioner.

The stand taken by learned counsel for the State is fair enough to satisfy this court that at least learned counsel for the State has not tried to defend an otherwise



totally illegal procedure followed by the Appellate Authority in the present matter. It is because of this stand of learned counsel for the State that this court is not imposing any cost against the State.

This court would have, in view of the stand taken on behalf of the State set-aside the impugned order and directed the Appellate Authority to reconsider the appeal and no further order would have been passed but considering that the manner in which the file has been processed in the department and a totally unfair procedure is being followed in hearing statutory appeal, this court thinks it just and proper not only to set-aside the impugned order but also to issue some direction to the Appellate Authority to comply with while hearing a statutory appeal. Such directions are to be given in consonance with the principles of natural justice. one of the facet of the principles of natural justice is the concept of an impartial Tribunal, in this case the Appellate Authority.

To this court, it is evident from the records that



the Assistant had initiated the note with an advise that the appeal is not fit for hearing and then the same was endorsed by the Section Officer and the file was sent to the State Drug Controller who is the Chief Licensing Authority under the Act and the Rules framed thereunder and in fact has power to cancel the license, though for different areas the Assistant Drug Controller have been vested with that power, the fact remains that the State Drug Controller is in an adversarial position where an order passed by him or the Assistant Drug Controller as the case may be is liable to be challenged before the Appellate Authority. In such circumstance, at the first instance it is the Assistant who exceeded his authority by recording a view that the appeal is not fit for hearing and thereafter the Section Officer was also beyond his authority in endorsing the view of the Assistant and then sending the file to the State Drug Controller.

In the opinion of this court, when a statutory appeal is preferred, at the outset the file is to be opened by the Assistant recording the date of presentation of the



appeal, it is to be numbered immediately and then he is required to move the file through his immediate senior officer for fixing a date of hearing by the Appellate Authority. No views whether the appeal is fit for hearing or is otherwise barred by limitation could have been expressed by the Assistant or any other authority through whom the file is to be placed before the Appellate Authority. Since the order of the Licensing Authority was under challenge, a copy of the appeal was required to be sent to the Licensing Authority for his response and contesting the appeal and the stand of the Licensing Authority could have been obtained. But in no circumstance the official file could be sent to the Licensing Authority for his comments in the file. The Licensing Authority would have been fully within his right to file his response within time and to either attend the hearing of the matter himself or through his authorized representative before the Appellate Authority but in no case the State Drug Controller or Assistant Drug Controller may be allowed to deal the matter in the



departmental file of Appeal. in this case, the State Drug Controller could not have been taken upon himself to advise the Appellate Authority what to do and what not to do. The State Drug Controller was in fact a party to the proceeding because it is the Assistant Drug Controller whose order was under challenge and he was exercising a power which is vested in the Chief Licensing Authority. Such files could not have been endorsed to the State Drug Controller and henceforth it is ordered that care shall be taken to follow the procedures fairly and as directed hereinabove.

The Principal Secretary – cum – Appellate Authority must remember that under the statute he has been conferred with some powers which are in the nature of quasi judicial powers, he is the first Appellate Authority and at this stage he would be required to consider all the grounds raised by the appellant. At first appellate stage he would be bound to consider the issues of facts and law as well. He must apply his own independent mind to the facts and circumstances of the



case. While exercising his powers under the statute as an Appellate Authority, he is required to go by the pleadings of the parties, he can call for the records from the office of the State Drug Controller/Assistant Drug Controller for his perusal and after giving appropriate opportunity of hearing to the parties, as far as possible he should dictate the order in presence of the parties but even if the order is not dictated in presence of the parties, the order passed by him must indicate an independent exercise of mind by the Appellate Authority. The Appellate Authority cannot go by the advice of his subordinate or any other authority in the department. It would be a dangerous approach on the part of the Appellate Authority to rely upon noting of the Joint Secretary and the State Drug Controller advising him to take a particular view of the matter.

In the Facts and circumstances of the case as stated hereinabove, I.A. No. 01 of 2019 is hereby allowed and Annexure '10' i.e. the order no. 1049 dated 20.08.2019 issued under the signature of Principal Secretary, Health Department, Government of Bihar is



hereby set-aside.

Now the Principal Secretary will fix a date of hearing in the appeal within a period of two weeks from the date of receipt/production of a copy of this order and after giving an opportunity of hearing to the petitioner an appropriate and independent order shall be passed by him.

Since learned counsel for the petitioner has submitted before this court that the impugned order passed by the Assistant Drug Controller was communicated to him on 08.06.2019, the Appellate Authority shall not only peruse the records of the Assistant Drug Controller but would also give an opportunity to the petitioner to file an appropriate application explaining the delay within a reasonable time.

The petitioner shall be also at liberty to pray for an interim relief before the Appellate Authority and if such an application is preferred within a period of three weeks from today the Appellate Authority shall consider the same and pass an appropriate order thereon within a period of 30 days from the date of receipt of the



application.

Till such time, the impugned order passed by the
Assistant Drug Controller as contained in Annexure '6' to
the Writ Application shall remain stayed.

(Rajeev Ranjan Prasad, J)

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