

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6136 of 2020

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M/s New Green Medical Hall Represented by Proprietor Md. Mahmood Alam
(Male aged about 50 Years, S/o-Md. Sattar Ansari Premise Situated at Naya
Bazar Lakhisarai R/o- Punjabi Mohalla Ward No. 16, P.S.-Kabaiya
Lakhisarai,

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, New Secretariat, Patna.
2. The State Drug Controller-Cum-Chief Licensing Authority, New Secretariat,
Bihar, Patna.
3. The Assistant Drug Controller, Drug Control Administration Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 22-06-2020

Exercising power under sub-rule (1) of Rule 66 of the
Drugs and Cosmetics Rules, 1945 (hereinafter referred to as ‘the
Rules’), the Assistant Drug Controller, Lakhisarai, who is the
licensing authority, has cancelled the petitioner’s licence issued
under Chapter-VI of the Rules. The petitioner claims that it deals
in the business of sale, store, distribution of drugs through
wholesale in the name and style of M/s New Green Medical Hall.

2. Let it be noted that the petitioner has statutory remedy
of appeal under the Rules against the impugned action.

3. Mr. Ram Shankar Das, learned counsel appearing on
behalf of the petitioner has, however, submitted that for the



irregularities found by the licensing authority he could have partially cancelled the licence under Rule 66(1) of the Rules, against which the petitioner would have maintained statutory appeal. According to him, since the licence has completely been cancelled, this Court should interfere with the impugned order. He has relied on a decision of this Court in case of *Universal Drug House Private Limited vs. State of Bihar and others (AIR 2004 Patna 86)*. He has accordingly submitted that the impugned order may be set aside with an observation that the said cancellation should be limited to sale of hand sanitizers for the alleged irregularities in sale of sanitizers, whereafter the petitioner should be given a liberty to prefer appeal before the appellate authority in respect of the said limited cancellation also.

4. It is pertinent to note that it was pointed out to learned counsel for the petitioner that the petitioner had statutory remedy of appeal, which he ought to have availed, he has argued this application on merit at length and has insisted for this Court to go into the merits of the controversy involved, instead of relegating the petitioner to the appellate authority. Since the matter has been heard at length, it has been considered apt to decide the case on merits.



5. A counter affidavit has been filed on behalf of the State of Bihar. The petitioner has filed a rejoinder to the said counter affidavit. Learned counsel for the parties have been heard at length.

6. It transpires from the records that the Assistant Drug Controller, Lakhisarai had conducted an inspection of the petitioner's business premises on 07.04.2020. In course of inspection following deficiencies were found :-

(i) The pharmacist Md. Khurshid Alam was absent.

(ii) The petitioner indulged in black marketeering of hand sanitizers, inasmuch as, he was found selling 100 ml. sanitizers at the rate of Rs. 186/- per bottle against the price of Rs. 50/- per 100 ml. as fixed by the Ministry of Consumer Affairs, Food and Public Distribution in its notification issued on 21.03.2020.

(iii) Sales invoices were not found up-to-date, inasmuch as, after 20.03.2020 till the date of inspection no sales invoice was found issued, meaning thereby that without issuing sales invoices, the drugs were being sold. Further, in sales invoice No. 907, issue date and signature of the authorised signatory was altered by overwriting. Thus, '20.03.2020' was written, whereas in the second copy of the



same series of the sales invoice, '01.04.2020' was mentioned.

(iv) Purchase records of drugs were not presented by the petitioner during the inspection.

7. Based on the said inspection, the petitioner was put to show cause notice asking him to explain as to why the drug licence issued in its favour be not cancelled/ suspended.

8. Since the petitioner did not respond to the show cause notice dated 07.04.2020, another notice was issued on 11.04.2020. The petitioner submitted his reply on 20.04.2020, copy of which has been brought on record by way of Annexure-4 to the writ application. On careful reading of the petitioner's explanation, it can be easily culled out that the following was his defence :-

(i) At the time of inspection the pharmacist had gone to have his meal.

(ii) At the time of inspection the purchase documents were not available in the business premises, copies of which were enclosed with the show cause reply.

(iii) He did not have the knowledge of notification dated 21.03.2020, issued by the Ministry of Consumer Affairs, Food and Public Distribution and that in future he would be charging Rs. 50/- per 100 ml. of hand sanitizers He had so far not received



payment of bills against supply of hand sanitizers.

9. On the basis of aforesaid defence, he requested for accepting his show cause reply. As can be seen from the petitioner's show cause reply at Annexure-4 that petitioner claimed to have purchased hand sanitizers from Jai Mata Di Traders, Near Mogalpur Police Chowki, Kath Ka Pool, P.S. Khajekalan, District Patna at the rate of Rs. 150/- per unit against maximum retail price of Rs. 186/-, as is evident from copy of sales invoice dated 18.03.2020, which was enclosed with his show cause reply.

10. The petitioner's show cause reply was considered by the Assistant Drug Controller, Lakhisarai. He noticed that name of the manufacturer, signature of the competent authority and GST details were not available in the said sales invoice. Absence of these crucial details in the sales invoice created suspicion in the mind of the licensing authority on its genuineness. For verification of the said sales invoice dated 18.03.2020, the same was sent to the Assistant Drug Controller, Patna. The Assistant Drug Controller, Patna through his communication dated 04.05.2020 informed the licensing authority that there was no wholesale dealer in the name of Jai Mata Di Traders. He accordingly formed an opinion that the petitioner had misled the licensing authority by



furnishing forged and fabricated documents in the nature of a copy of sales invoice. Noticeably, the petitioner had not given any reply in respect of overwriting in sales invoice No. 907, whereby, by an act of overwriting, the date of sales invoice was changed to 20.03.2020. The licensing authority refused to accept the petitioner's stand that he did not have any knowledge about the notification issued by the Ministry of Consumer Affairs, Food and Public Distribution.

11. Considering the gravity of the allegation made against the petitioner and the so called reply filed by him, the licensing authority, by the impugned order dated 06.05.2020 has cancelled the petitioner's licence No. LKS-02/2001 (Form-20) and LKS-02A/2001 (Form-21) issued under the Rules.

12. It is significant to note that there is specific finding recorded in the impugned order that the copy of the sales invoice, which the petitioner had annexed with his reply to the show cause notice in support of the plea that the petitioner had purchased hand sanitizers from Jai Mata Di Traders, was forged and fabricated. There is absolutely no averment in the writ application countering the said finding. A plea is being taken in the writ application that no copy of the report to the effect that the said sales invoice was forged and fabricated was supplied to the petitioner and, therefore,



the impugned order is vulnerable and requires interference by this Court.

13. Had that been the only reason for the licensing authority to cancel the petitioner's licence, the Court could have gone into the question as to whether non-supply of the said report had, in any manner, prejudiced the petitioner's case. The said sales invoice dated 18.03.2020 (at page 16 of the writ petition) admittedly does not bear the name of the manufacturer nor signature of the competent authority. It does not disclose GST details.

14. Considering these facts, coupled with the fact that the petitioner has not clearly mentioned in the writ petition that there exists a supplier in the name of Jai Mata Di Traders from where he had purchased the hand sanitizers on 18.03.2020, I do not find it to be a fit case for this Court's interference in exercise of power of judicial review under Article 226 of the Constitution of India. The decision of this Court in case of ***Universal Drug House Private Limited*** (supra) has no application in the facts and circumstances of the case. The petitioner in case of ***Universal Drug House Private Limited*** (supra) was directed to show cause with reference to two specific items, namely, 'Ocimal Linctus with Codeine' and 'parafen' tablets out of 51 items covered by the



licence. This Court noticed the language of Rule 66(1) of the Rules which reads thus :-

“66(1) The licensing authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons therefore, cancel a licence issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the licence or with any provisions of the Act or Rules thereunder.”

15. This Court then highlighted in case of ***Universal Drug House Private Limited*** (supra) that the provision of the Rules itself envisaged a partial suspension/ revocation of the licence in respect of items with reference to which the violation was committed. In the aforesaid background, this Court, while allowing the appeal observed in paragraph 17 as follows :-

“17. It is accordingly directed that with regard to cancellation of the licence in respect of Ocimal Linctus with Codeine and parafen tablets, it will be open to the petitioner to prefer an appeal under Section 66(2) of the Rules. In case such an appeal is preferred within one month from today, the appellate authority shall not reject it on the ground of delay alone.”



16. The argument of Mr. Ram Shankar Das, learned counsel for the petitioner that the breach in the present case relates only to sale of hand sanitizers at a higher rate than that fixed by the Ministry of Consumer Affairs, Food and Public Distribution and, therefore, there should have been partial cancellation/ suspension of licence limited to the said item is not at all acceptable to this Court. This is for the reason that several irregularities were found by the Assistant Drug Controller including absence of pharmacist from the shop premises, deliberate overwriting in the sales invoice with an attempt to conceal illegalities and fabrication of sales invoice.

17. At a time when the entire humanity is globally facing the wrath of Covid-19 pandemic, there are persons who are trying to maximise their financial gains through dubious means. Baleful effect, which such activities may have on the public health, cannot be ignored while taking decisions under statutory provisions. The nature of illegalities committed by the petitioner as detected by the licensing authority is of grave nature, in the Court's opinion.

18. This writ application has not merit and is accordingly dismissed.

19. Before I part with, I must record that if, according to the licensing authority, the copy of the sales invoice dated



18.03.2020, which the petitioner had presented in his defence while replying to his show cause notice, has been found to be forged and fabricated, he must lodge a criminal case in this regard.

20. Let this order be communicated to the Assistant Drug Controller, Drug Control Administration, Lakhisarai.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2020
Transmission Date	NA

