

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24503 of 2019

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M/s Amar Enterprises, Proprietor Sheo Kumar Aged Bout 59 Years, Gender Male, Son of Shri Mangal Chand Gupta, Premises situated at B-4, Ground Floor, Uday Place, G.M. Road, Patna, P.O.- Bankipur, P.S.- Pirbahore, District- Patna, Pin- 800004 and Resident of Flat No. 302, Shyam Rukamini Nikunj Apartment, Road No. 4, Kajipur, P.O.- Bankipur, P.S.- Kadamkuan, District- Patna, Pin- 800004.

... .. 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, Patna Municipal Corporation Area, Patna, 4th Floor, NMCH Campus, Kankarbagh, Patna- 800020.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarvdeo Singh, Advocate Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Birju Prasad (GP-13)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 13-02-2020

Counter affidavit has been filed during the course of argument.

Let it be taken on record.

Heard Mr. Sarvdeo Singh for the petitioner and
Mr. Birju Prasad for the State.

The petitioner has challenged the order dated
11.02.2019 passed by the Assistant Drug Controller, Patna



whereby the license of the petitioner to run his medical shop has been cancelled.

It appears from the records that the petitioner is the proprietor of M/s. Amar Enterprises, who has a valid license under the Drugs and Cosmetics Act, 1945 to run the medical shop which had been running since the year 2000. The shop of the petitioner was raided on 10.02.2018 and without there being any irregularity or illegality, the petitioner was issued a show cause notice to explain certain purchases made by the Janta Medical Hall from the shop of the petitioner. The notice, it has been urged was served upon the petitioner after four months of the inspection of the shop.

The notice was duly answered by bringing on record the memos and the bills of purchase and the sale but the Assistant Drug Controller (respondent no. 3) *vide* his order dated 26.09.2018 cancelled the drug license of the petitioner.



The petitioner challenged the aforesaid order before the appellate authority *viz.* the Principal Secretary, Health Department, Government of Bihar *vide* Appeal No. 21/2018. The appellate authority *vide* order dated 24.01.2019 set aside the order passed by the Assistant Drug Controller cancelling the license of the petitioner and directed him to pass a fresh order within a fortnight after examining the entire records and after considering the reply furnished by the petitioner. Again the impugned order has been passed by the Assistant Drug Controller on 11.02.2019 holding that no reply was filed by the petitioner even though this was the specific ground taken in appeal that the reply was preferred by the petitioner along with all the necessary documents in support of the contention raised which was also received in the office of the Assistant Drug Controller. It was only for this reason that the earlier order passed by the Assistant Drug Controller was set aside and a fresh order was directed to be passed. This time also, a mechanical order has been



passed, reiterating that there is no reply on behalf of the petitioner.

The order impugned therefore is absolutely untenable and is, therefore, set aside.

The Assistant Drug Controller, Drug Control Administration, Patna is directed to pass a fresh order after taking into account the reply preferred by the petitioner by a reasoned order within a period of fifteen days from the date of production/receipt of a copy of this order.

The Principal Secretary, Health is further directed to enquire into the matter as to why the Assistant Drug Controller has shown such intransigence in complying with the orders of the appellate authority. If the Assistant Drug Controller has deliberately done this, the responsibility must be fixed and an appropriate proceeding be initiated against him after noticing him.

The Principal Secretary shall be under an obligation to forward a copy of the enquiry made by him in that regard and if any action is taken on finding that such



a step was taken by the Assistant Drug Controller deliberately, then the report of the action taken against him, to this Court through the registry latest by 27th of March, 2020.

With the aforesaid direction/observation, the writ petition stands allowed and disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.02.2020
Transmission Date	

