

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2326 of 2020**

1. Rajesh Kumar Agrawal, S/o Shri Anand Kumar Agrawal Aged About 42 Years (Presently In Judicial Custody) Proprietor Of M/s Tirupati Pharma, R/o C 19, Sector IV , Devendra Nagar, Raipur Chhattisgarh.
2. Smt. Poonam Agrawal W/o Shri Rajesh Kumar Agrawal, Aged About 40 Years R/o C 19, Sector IV, Devendra Nagar, Raipur Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Health And Family Welfare , Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur Chhattisgarh.
2. Controller Food And Drug Administration, Department Of Health And Family Welfare, Govt. Of Chhattisgarh, 4th Floor, Block 1, Indrawati Bhawan, Naya Raipur 492002 Chhattisgarh
3. Dy. Director Food And Drug Administration (Licensing Authority), 2nd Floor , State Food And Drug Testing Laboratory Building, Kalibadi, Raipur Chhattisgarh.
4. M/s Novitas Health Care (A Division Of Wings Pharmaceuticals Pvt. Ltd.) Through Its Director Registered Company Having Its Corporate Office At J 13, Udyog Nagar, Industrial Area, Delhi 110041.
5. Station House Officer Police Station Maudhapara , Raipur Chhattisgarh

---- Respondents

For Petitioners	:	Shri Abhishek Sinha, Advocate
For Respondent/ State	:	Ms. Sunita Jain, G.A.
For Respondents No. 4	:	Shri Vikas Pandey, Shri A.K. Yadav and Shri Sanjay Yadav, Advocates

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03.03.2021**

Heard.

1. The challenge in this petition is to the order dated 26.08.2020 (Annexure P-1) whereby the license of the petitioner under Form 20B and 21B under Drugs & Cosmetic Rules, 1945 has been cancelled.

2. The limited grievance of the petitioners are that the license was granted to Rajesh Kumar Agrawal being the proprietor of Tirupati Pharma and the notice of hearing before the cancellation was issued on 16.07.2020 (Annexure R-1). It is submitted that before the date of issuance of the notice the petitioner was arrested under NDPS Act on 15.05.2020. It is contended that the notice was issued to Tirupati Pharma of which the petitioner is proprietor and on 21.07.2020 a letter was written by the wife of the licensee who is petitioner No. 2 herein stating that since Rajesh Kumar Agrawal is under custody and is lodged in central jail, as such time may be granted till he is released. He further submits that before the cancellation of license was ordered on 26.08.2020, no notice was served which is mandatory under Section 66 (1) of the Act of 1945.
3. Learned State counsel opposes the argument and would submit that the notice was issued to the proprietorship firm and therefore it would be deemed service and since the petitioner did not file any reply, as such license was cancelled. She further submits that there is alternative remedy available to the petitioner under Section 66 (2) of the act of 1945.
4. Perused the documents.
5. Perusal of the documents would show that when the notice dated 16.07.2020 was issued, the proprietor of Tirupati Pharma i.e. Rajesh Kumar Agrawal was in police custody. Rajesh Kumar Agrawal is the proprietor of the firm would be evident from Annexure P-2 which is a license issued under Form 20B and 21B. It being so, *prima facie* it appears that owner of the Tirupati Pharma, Rajesh Kumar Agrawal was under custody, therefore the letter was issued by the wife of the petitioner who is petitioner No. 2 herein, who wrote a letter on 21.07.2020 (Annexure P-5) to provide time on the ground that Rajesh Kumar Agrawal is under arrest. The consequence therefore will lead to draw inference that before such order Annexure P-1

was passed, no opportunity of hearing was provided to the owner licensee i.e. Rajesh Kumar Agrawal who is said to be still in jail. Further, Section 66 of the Rules of 1945 mandate that the notice is to be served to the licensee by the licensing authority, the notice was not served to the licensee as it would be evident from the facts then there would be violation of Rules of 66 (1).

6. Rule 66 (1) of the Act of 1945 are reproduced hereinunder:-

66. Cancellation and suspension of licences :- (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 therefor, 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:

1[Provided that, where such failure or contravention is the consequence of an act or omission on the part of an agent or employee, the licence shall not be cancelled or suspended if the licensee proves to the satisfaction of the licensing authority-

(a) that the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or a director of the company, or

(b) that he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission

the licensee had not or could not reasonably have had, knowledge of that previous act or omission, or

(c) if the act or omission was a continuing act or omission, he had not or could not reasonably have had knowledge of that previous act or omission, or

(d) that he had used due diligence to ensure that the conditions of the licence or the provisions of the Act or the Rules thereunder were observed.]

7. The cancellation of the license without giving any opportunity of hearing or service of notice to the licensee naturally would lead to civil consequence. Consequently, though the alternate remedy is available, this Court can invoke the jurisdiction under Article 226 of the Constitution of India as the rules of natural justice were not followed which is also otherwise mandatory under the Statute. Under the circumstance order dated 26.08.2020 (Annexure P-1) is quashed.
8. Accordingly, the petition stands allowed. The respondents however shall be at liberty to adhere to rules 66 afresh for an enquiry, if it is thought expedient in the facts of the case.

Sd/-
(Goutam Bhaduri)
Judge