IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>WP(C) No.7846 of 2017</u>
(Through Hybrid mode)

M/s. Jai Bharat Medicals	....	***Petitioner***

Mr. S. Mallik, Advocate

versus-

State of Odisha and others	....	***Opposite Parties***

Mr. Tarun Kumar Pattanayak, Advocate
(Addl. Standing Counsel)

CORAM: JUSTICE ARINDAM SINHA

<u>ORDER</u>
08.09.2022

<u>Order No.</u>

09. **1.** Prayers in the writ petition are two fold. First is for quashing office memorandum dated 27th February, 2015, issued by Health and Family Welfare Department, as violative of articles 14, 16, 19(1)(g) and 21 in the Constitution of India. Second, direction upon concerned authority to renew the licence of petitioner's on-campus medicine store.

2. Mr. Mallik, learned advocate appears on behalf of petitioner and submits, impugned circular is without authority. It should be set aside and quashed. He submits, the laudable policy for providing free medicines is purported reason for driving his client out of business and livelihood. If free medicines are given by State in the hospital campus, no one will buy from his client's shop. His client will, therefore, automatically be out of business but State is using a purported policy statement to evict his client. Fundamental rights of his client stand affected/breached.

3. On query from Court he submits, there was refusal to accept application for renewal of the licence. His client moved this Court and obtained interim order dated 5th May, 2017 passed by coordinate Bench and pursuant thereto has been continuing with the shop on payment of licence fees. He draws attention to rejoinder of his client. Disclosed in it are, inter alia, communication dated 9th January, 2018 from Additional Secretary to Government addressed to the Advocate General. Text of the communication is reproduced below.

> *"I am directed to invite a reference to your letter No.315 dated 05.01.2018 on the subject noted above and to say that inspite of search, neither a copy of the Cabinet decision if approved in the matter under reference could be made available nor is the relevant file of the said year traceable at present. Further it may be mentioned here that the order passed by the Govt. in the year, 2015 was not approved by the Cabinet but only Govt. approval was taken."*

He submits, impugned policy was not approved by the Cabinet. Accordingly, it cannot be implemented but is purportedly being used to not renew his client's licence.

4. Mr. Pattanayak, learned advocate, Additional Standing Counsel appears on behalf of State and submits, petitioner does not have an indefeasible right to claim renewal of licence. He refers to the licence dated 30th June, 2012, to demonstrate from clause 11 therein, it was for period not exceeding 5 years from 1st July, 2012 to 30th June, 2017. He also relies on clause 16, reproduced below.

> *"16. That, the Lessor reserves the right to with held this permission to carry on this business of sale and store of medicines and drugs within the campus of hospital, if in the opinion of the Drugs Controller the lessee has failed to satisfy the authority with regard to the condition of licence, or the lessee has failed to meet the purpose for which the permission as granted* ***and/or for such other reason if it is felt by the lessor that the lessee should not be allowed to carry on this business on the public interest****."*
>
> (emphasis supplied)

He submits, petitioner does not have an indefeasible right to claim renewal of the licence and it is in public interest it not be renewed.

5. Regarding first prayer of petitioner for quashing impugned policy, Mr. Pattanayak submits, the communication dated 9th January, 2018 is privileged. Petitioner cannot rely on it as it is communication between a litigant and its learned advocate. He adds, impugned policy was issued with authority, relying on resolution dated 1st July, 2013 taken by Health and

Family Welfare Department. On query from Court he submits, by reason of several litigations, impugned policy could not be given effect till date.

6. He relies on judgments of the Supreme Court.

(i) **Yazdani International (P) Ltd. v. Auroglobal Comtrade (P) Ltd.**, reported in **(2014) 2 SCC 657**, paragraphs 12, 13, 43 and 44.

Relying on the decision he submits, in this case the authority decided not to renew the licence for vending medicines in the hospital premises. The decision is neither irrational nor arbitrary. It should not be interfered with in judicial review.

(ii) **Krishnan Kakkanth v. Government of Kerala**, reported in **(1997) 9 SCC 495**, paragraphs 26, 27, 35 and 36.

He submits, in that case farmers obtaining subsidy were directed to purchase pumps from two vendors. Other vendors challenged the decision alleging infringement of their fundamental rights. The Supreme Court threw out the challenge to hold, reasonable restrictions are possible as can be imposed and the direction did not offend article 14 of the Constitution.

(iii) **State of Orissa v. Radheyshyam Meher**, reported in **(1995) 1 SCC 652**, paragraph 6.

He submits, in that case the Supreme Court refused to interfere with the Government's policy of providing on-campus medicines, challenged by medicine vendors outside the hospital premises.

7. In reply, Mr. Mallik submits, he is not pressing his client's first prayer. He submits further, there be direction upon the authorities to renew his client's licence.

8. Facts are that petitioner is seeking to continue to occupy under licence and operate medicine shop inside the hospital premises. Petitioner's efforts to have the licence renewed, have been resisted on basis of impugned circular. Impugned circular has not been given effect to by the State. On these facts question for consideration is only whether relief sought for by petitioner, to continue under licence, is to be granted.

9. It appears from clause 16 in the licence that there can be termination of it if it is felt by the lessor that the lessee cannot be allowed to carry on business in public interest. Of course, here there is no question of termination of licence but refusal to renew it. It stands settled by **Yazdani International** (supra). That a licensee does not have indefeasible right to continue under it or have it renewed since, licence does not create interest in the property. Paragraph 44 from **Yazdani International** (supra), is reproduced below.

> *"44. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out*

> *by this Court in Ramana Dayaram Shetty v. International Airport Authority of India. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of the land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved."*

In this case refusal or resistance to renew the licence is to be seen if is irrational or arbitrary, there being compelling reasons to indicate that the decision has no rational purpose to be achieved.

10. State has not implemented impugned policy till date and there is no disclosure to show otherwise. Petitioner has been continuing in the licence under interim order dated 5th May, 2017, accepted by State. Petitioner has also given up first prayer challenging impugned circular. There is no fetter on State to establish medicine shops or corners inside the hospital premises, to provide free medicines to the patients. There is also nothing on record to show State wants to set up free medicine shops on requiring the space occupied by petitioner under the licence and continuing after its expiry as aforesaid. In the circumstances, it does appear that refusal or resistance by State to renew petitioner's licence is irrational and arbitrary. Above reasons indicate that the decision to not renew has no rational purpose to be achieved. It is also true that in event free medicines are made available in the hospital premises, wherein petitioner is running medicine shop on licence, the patients will exercise choice on from where to obtain the medicines. Petitioner dealing in medicines cannot compete with State, who intends to provide free medicines. Petitioner, therefore, is not a threat to the policy, if to be implemented.

11. From **Krishnan Kakkanth** (supra), paragraph 35 is reproduced below.

> *"35. In our view, the impugned circular does not offend Article 14 of the Constitution. The direction contained in the said circular cannot be held to be vitiated being arbitrary, capricious or unreasonable. The impugned circular specifically mentions that in order to implement the schemes introduced by the Government for streamlining specific roles and responsibilities of different agencies involved, the directions contained in the circular have been given. It has been placed on record that it was brought to the notice of the Agricultural Department of the State Government that false invoices had been issued by dealers without effecting actual sales with a view to draw loans, subsidies and other financial benefits from the Government. Reports were published in newspapers about widespread manipulation and irregularities in the activities of various dealers in pumpsets. It is also not in dispute that RAIDCO is the only Government-controlled Cooperative Society in the State of which eighty per cent capital was subscribed by the Government. The other approved dealer KAICO is also a Cooperative Society involved in dealership of pumpsets. If the State Government on consideration of such facts and circumstances and to ensure genuine sale of pumpsets at proper price with effective after-sales service has felt that farmers covered by financial assistance*

> *scheme should be fastened with an obligation to purchase pumpsets only from approved dealers in a region where according to State Government there is a felt need of purchase from such approved dealers, it cannot be held that such action of the State Government lies in its ipse dixit, without being informed by any reason."*

It will appear from said judgment that the Supreme Court found those other dealers, who had challenged the circular on farmer subsidy requiring farmers to buy pumps from specified two vendors, to be unscrupulous vendors. Hence, the circular was seen to have imposed a reasonable restriction on exercise of fundamental rights asserted by those other vendors.

12. **Radheyshyam Meher** (supra) has no application to the case since petitioner has withdrawn his first prayer.

13. Opposite party no.5 is directed to renew the licence of petitioner on such terms as are to be imposed thereby, keeping in mind those are to be reasonable and fair. The renewal is to be for such period as would entitle petitioner to obtain drug licence from opposite party no.4.

14. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS