

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.10012 of 2022
(Through Hybrid mode)

M/s. Shree Govinda Medicine Store Petitioners
and another

Mr. Sanjib Swain, Advocate
versus-

State of Odisha and others Opposite Parties

Mr. A. K. Sharma, Addl. Govt. Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
27.07.2022

Order No.

03. 1. Mr. Swain, learned advocate appears on behalf of petitioners and submits, impugned is memo dated 25th March, 2022 issued by Deputy Drug Controller (Administration), the licensing authority saying, inter alia, that his clients' drug licence shall be deemed to have been cancelled. He submits, there was delay by his clients in applying to deposit retention charges. The delay was five days. He draws attention to **order dated 21st March, 2022** passed by this Bench in his clients' earlier writ petition **W.P.(C) no.4760 of 2022**, disposing of it, whereby there was direction upon the authority to consider and deal with representation dated 9th February, 2022 regarding delay.
2. He relies on following in said **order dated 21st March, 2022** (supra), reproduced below.

“In event said authority finds reason for the delay was prevention by happening of the pandemic and the statute provides for condonation, the order relied upon by petitioners, thereby, should be applied, to condone the delay and issue the licence. Either way petitioners must be informed within three weeks of communication.”

3. He then draws attention to **orders dated 23rd March, 2020 and 23rd September, 2021** passed by the Supreme Court in **Suo Motu Writ Petition (civil) no.3 of 2020** and submits, they were not considered by the authority in issuing impugned memo. Hence, his client seeks interference.

4. The writ petition was moved on 19th May, 2022. State had sought adjournment and same was granted by Court.

5. On 6th July, 2022 Mr. Sharma, learned advocate, Additional Government Advocate appearing on behalf of State had handed up memo dated 30th June, 2022 issued by Officer on Special duty, Health and Family Welfare Department, in effect seeking time to obtain views of the department regarding applicability of the orders made by the Supreme Court, regarding suspension of limitation/condonation of delay in the lock down period of the pandemic. He had sought and obtained further adjournment of 3 weeks. Today he submits, he has not yet received further instruction and relies upon paragraph 12 in the counter.

6. The subject and text of impugned memo are reproduced below.

“Sub: Consideration of Retention of drug licences in from 20, 21 & 20 F for the periods from 15.01.2021 to 14.01.2026-regarding.

Sir,

As the partners of the said firm failed to deposits a licence retention fees for retention of their licences within stipulated period before expiry of their license i.e. 14.01.2021 as well as within 06 months on payment of additional fees as required u/r 63(3) of Drugs & Cosmetics rules, the licences shall be deemed to have been cancelled.

Therefore, your application cannot be considered as per the provision of D & C rules as mentioned above.”

It will be seen that the retention is for part of the period, from 15th January, 2021 to 14th January, 2026. Retention fee was due by 14th January, 2021 as per impugned memo. Petitioners' case is, there was 5 days delay in depositing retention fee.

7. There is no indication in impugned memo regarding delay, as may have been caused by reason of the pandemic, taken cognizance by the Supreme Court. Said **orders dated 23rd March, 2020** (supra) and **23rd September, 2021** (supra) were passed in exercise of power under, inter alia, article 142 in the Constitution. It is true that limitation applies to suits, applications and appeals made to Courts and also to proceedings, wherein the law of limitation has been made applicable. In the case at hand, Court is concerned with rule 63 in Drugs and Cosmetics Rules, 1945, providing procedure for duration of licence. The procedure limits validity of an extended licence period, unless the licensee deposits licence

retention fee before expiry of the period prescribed. The Supreme Court took suo motu cognizance of difficulties faced by litigants in adhering to prescribed times of limitation, in respect of legal proceedings. There is no reason why it should be held that difficulties suffered on happening of the pandemic were not faced by citizens on requirements to act within prescribed time in relation to taking steps under prescribed procedures, to, as in this case, obtain licence under Drugs and Cosmetics Act, 1940. Adjournment was granted on 6th July, 2022 on submission made upon reliance of memo dated 30th June, 2022 issued by Officer on Special Duty, Health and Family Welfare Department, as the office had sought to obtain views of the department regarding applicability of said orders of the Supreme Court. Obviously no view has been obtained. Petitioners cannot be made to wait indefinitely for adjudication regarding relief prayed for in the writ petition.

8. The principles regarding condonation of delay in Limitation Act, 1963 prescribing period of limitation for suits, applications and appeals, as applied by extending the periods on **orders dated 23rd March, 2020** (supra) and **23rd September, 2021** (supra) are found to be applicable to time prescribed by rule 63 in the 1945 Rules, as necessitated by happening of the pandemic, Covid-19.

9. Opposite party nos.2 and 3 are directed to accept the retention fees for the period from 15th January, 2021 to 14th January, 2026 from petitioners, as already deposited and, duly renew the licence.

10. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS

