

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.14917 of 2022
(Through hybrid mode)**

Kamal Kumar Agrawal

....

Petitioner

Mr. S. Mallik, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S. N. Das, Advocate
(Additional Standing Counsel)

CORAM: JUSTICE ARINDAM SINHA

**ORDER
08.08.2022**

Order No.

- 03. 1.** Mr. Mallik, learned advocate appears on behalf of petitioner and submits, impugned are orders dated 16th April, 2022 and 6th May, 2022. His client was running 24 hours medicine shop in campus of Capital Hospital, Bhubaneswar. The medicine shop was under tenancy and with drug licence issued. The hospital authorities required his client to move. His client had moved this Court earlier by W.P.(C) no.9826 of 2015, disposed of by order dated 3rd February, 2021. Pursuant thereto his client relocated to different shop rooms allotted to his client. However, the hospital authorities reduced the period of occupation mentioned in the agreement dated 21st January, 2022, to one year. By reason thereof the drug licensing authority issued impugned orders rejecting his client's application for issuance of drug

licence at the new premises.

2. Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State. On query from Court he submits, he is appearing both for the hospital as well as the licensing authority. He submits, by circular dated 27th February, 2015 policy of the Government was informed to be that it is committed to provide free medicines to patients at public health facilities with setting up of 24 x 7 hours drug distribution counters. It was therefore decided that, inter alia, no extension of lease of on campus medical stores be done until further orders. This is why the extension agreement of one year. He submits, under the extension agreement petitioner cannot run medicine shop but can run any other shop. On query from Court, Mr. Das is unable to say what kind of shop petitioner is entitled to operate under the extension agreement.

3. Mr. Das relies on judgment of Supreme Court in **State of Orissa v. Radheyshyam Meher**, reported in (1995) 1 SCC 652, paragraph 6. The decision is inapplicable since controversy in that case was resistance by existing medicine shop owners outside the hospital, to the Government's decision to open medicine stores inside the hospital.

4. Perused order dated 3rd February, 2021 passed by coordinate Bench in earlier W.P.(C) no.9826 of 2015 (petitioners own case). It appears from said order petitioner had space measuring 12 X 20 sq.ft. allotted by the hospital authority in year 1999. Petitioner had made temporary structure for running

medicine shop. Subsequently, the authorities allotted him two shops in year, 2013 in the utility complex and directed petitioner to move there. The licensing authority acting in tandem with the hospital authority refused to renew petitioner's drug licence. Petitioner had moved Court by said writ petition.

5. During course of hearing petitioner expressed willingness to move to the new premises on given at least seven days time for the purpose and direction upon the authority to renew the drug licence in respect of the new premises. Coordinate Bench, in regard to petitioner's prayer for drug licence said in the order, inter alia, reproduced below.

"So far as the prayer for renewal of the drug license is concerned, the petitioner is required to approach the Authority concerned in this regard for fresh license, as revealed from the counter affidavit of the Licensing Authority. Needless to say that, if the petitioner applies for such license to run his medicine shop from the new premises with necessary documents and particulars, as required under the statute, his such application shall be considered within three months of making such application. However, this Court has expressed no opinion on the merit of the same in any manner."

6. Petitioner moved to the new shops allotted to him. Said agreement dated 21st January, 2022 was executed between the hospital and petitioner. However, period of the occupation under the agreement was reduced to one year. Submission on behalf of State has been recorded above that petitioner,

under this new agreement, can carry on any other business but dealing in medicines. Also recorded is inability of State to say what other business can be run in hospital premises apart from or dealing in medicines.

7. The second contention of opposition to petitioner getting drug licence is reliance by State on said circular dated 27th February, 2015. The circular prohibits extension of lease of on campus medical stores to be done till further orders. States, therefore, contends that the allotment and agreement is not for the purpose of medicine shop.

8. It is clear that State got petitioner to be evicted or moved from his earlier occupation on holding out that he would be relocated. It is also true that petitioner, from his earlier occupation, was running medicine shop under licence. A requisite for grant of licence is minimum 5 years occupation of the premises, from which medicine shop is to be run. State has by one hand reduced the occupation period and by the other, relying on that refused issuance of drug licence.

9. Court is unable to see requirement of depriving petitioner of his livelihood by this two pronged attack against him on the basis of the pious policy decision of commitment to provide free medicines. There is no dispute that the hospital has not held out reasonable requirement, on the shops allotted to petitioner, purportedly for one year. State, through the hospital and the drug licensing authority appears to want to put petitioner out of business in the hospital premises. That can be achieved by State on

providing free medicines from separate State counters. Petitioner will automatically go out of business. Court appreciates that State is unwilling to take a position on what petitioner can do as other business in the shops allotted to him.

10. The hospital authority acting in tandem with the drug licensing authority have acted unfairly against petitioner. There is no basis for the agreement dated 21st January, 2022 to have period of one year. The hospital authorities in executing the agreement acted against standing policy direction by said circular dated 27th February, 2015. Why they did so Court is not inclined to enquire.

11. Petitioner is entitled to engage in business and livelihood by running drug store. The rules require the licensing authority to insist on a 5 years occupation period. In the circumstances, opposite party nos.1 and 2 are directed to amend said agreement dated 21st January, 2022, to be for period of 5 years commencing from 21st January, 2022. Petitioner's occupation of the newly allotted shops under the agreement will expire on 20th January, 2027. Notwithstanding, petitioner will produce this order before the drug licensing authority, who is directed to issue licence to petitioner, subject to compliance with other requisites and formalities.

12. The writ petition is disposed of.

(Arindam Sinha)
Judge