

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5291 OF 2022

M/s Reliable Chemist & General Stores .. Petitioner

Versus

The Assistant Commissioner and Licensing
Authority (Zone 2) & Anr. .. Respondents

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- Mr. Kalpesh U. Patil, for the Petitioners
 - Mr. P. P. Pujari, AGP for the State
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CORAM : MILIND N. JADHAV, J.

**DATE : MAY 10, 2022
(Vacation Court)**

P.C.:

- 1.** Heard.
- 2.** Learned counsel appearing for the Petitioner has impressed upon the Court that the issue pertaining to prescription of the Schedule H1 drugs which finds mention in the impugned order dated 14.02.2019 has not been considered appropriately by the Licensing Authority. He has drawn my attention to paragraph 3 of the impugned order which refers to the prescriptions and registered pharmacist bills which have been initialed by the pharmacist in the Petitioner's medical shop. He submitted that an adverse inference has been drawn by the Licensing Authority because the Petitioner's pharmacy at that time was not in a position to provide the printed bills as the printer had malfunctioned.

However, subsequently copies of the bills were provided, as recorded in paragraph No.5 of the order. He therefore submitted that the above issue ought to have been considered by the Licensing Authority.

3. Mr. Pujari, learned APP has sought to support the impugned order and submitted that the same has been correctly passed by the Licensing Authority in view of the Petitioner's dereliction.

4. It is seen from the records produced before the Court that the Petitioner has appointed a full time pharmacist in its medical store to supervise the sales of medicine as per norms and conditions of the Drugs and Cosmetic Act, 1945 (for short "the said Act"). In respect of the first allegation against the Petitioner that one salesman Mr. Arbaz Shaikh had sold the Scheduled drug to the Petitioner in the absence of the registered pharmacist without prescription, the Petitioner has submitted that he has furnished an appropriate explanation in the reply along with a copy of the concerned prescription which is the subject matter of the allegation against the Petitioner. Copy of the concerned prescription is placed at Exhibit 'E' to the Petition. According to the Petitioner, it is not true that the Petitioner has purchased any Scheduled drug in the absence of the pharmacist's prescription. In respect of the second allegation against the Petitioner that, the Petitioner has violated Rule 65(2) read with Rule 65(9)(a) of the Drugs and Cosmetic Rules, 1945 (for short "the said Rules") the Petitioner has submitted that the alleged bills i.e. bill No. 169950 and

169949 were in fact generated under the supervision of the registered pharmacist. The Petitioner has therefore submitted that, despite filing an appropriate reply to the aforementioned allegation, the Licensing Authority has dismissed the Petitioner's case on the ground that some bills were not signed by the registered pharmacist and the Petitioner had sold medicines without the presence of the pharmacist. Though, the Petitioner has admitted that on the date of the inspection it was found that some bills were not signed by the pharmacist but it is not a case where the said bills were never signed by the pharmacist. The concerned bills issued on 21.12.2018 have been signed by the pharmacist. It was only due to haste that some bills remained to be signed at the time of the raid and ongoing inspection. The Petitioner has submitted that a hypothetical conclusion cannot be drawn by the Licensing Authority on the basis of the aforementioned allegation that there was violation of Rule 65 of the said Rules. As against allegation No.4 against the Petitioner that he did not maintain all bills on a daily basis, it is stated that the same is without any basis. The Petitioner has pleaded that on the date of inspection he was arranging all bills chronologically, however due to the inspection initiated by the officer of the Licensing Authority the Petitioner had to attend to the said officer and this cannot be construed and held against the Petitioner that there was violation of the relevant rules. The last allegation against the Petitioner is that the Petitioner did not submit the record of

the sales and purchase bills mentioned by the Respondent No.1 in the inspection report. It is the Petitioner's categorical case that the Petitioner has subsequently submitted all purchase bills of sales alongwith his reply but the same have not been considered by the Licensing Authority. The Petitioner has stated that he is ready and willing to resubmit the same with appropriate documentary evidence. He submitted that a substantial part of the documentary evidence is annexed to the Petition from page Nos.36 to 56.

5. I have perused the impugned order which intermittently refers to the alleged bills issued by the Petitioner. However, the Petitioner has made out a case that he is in a position to produce the entire material afresh before the Licensing Authority and satisfy the Authority. Hence, the Petitioner deserves to be granted an opportunity to place the relevant material before the Authority.

6. In view of the above discussion and findings, the impugned order dated 14.02.2019 stands quashed and set-aside. Respondent No.1-Licensing Authority is directed to give a fresh hearing to the Petitioner within a period of 2 weeks from today. The Petitioner shall present himself before the Respondent No.1/Officer nominated for hearing on 13.05.2022 at 12:00noon and if so required on any date thereafter for the hearing. Petitioner is permitted to file written submission and compilation of documents afresh upon which he seeks to rely upon in support of his case. After hearing the Petitioner, the Respondent No.1

Licensing Authority shall pass a speaking order on or before 30.05.2022. In the meanwhile the Petitioner shall not operate/open his Medical Shop until the decision is rendered by the Licensing Authority on or before 30.05.2022.

7. With the above directions, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]