

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6123 OF 2022

M/s Shri Ganesh Medial & General Store -- Petitioner

Vs.

The State of Maharashtra and another -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.G. Mate, Advocate for Petitioner

Mr. N.R. Patil, AGP for Respondent Nos.1 and 2

CORAM: AVINASH G. GHAROTE, J.

DATE : 10th OCTOBER, 2022

Heard Mr. Mate, learned counsel for the petitioner and Mr. Patil, learned Assistant Government Pleader for respondent - State.

2. The only ground urged is that the punishment imposed by the impugned order dt. 24/7/2022 (page 60) by the respondent No.1 of suspending the license for 45 days, is too harsh and would cause inconvenience to the patients. The petitioner, was initially found to have been not present at the shop when the inspection was conducted and a violation of the provisions of Rule 65(2) Drugs and Cosmetics Rules, 1945, was found to exist. So also, as the office copy of the bill issued did not contain signature of the petitioner, and an offence

under Section 65(3) of the Drugs and Cosmetics Rules, 1945 was also found to have existed, as a result of which the license of the petitioner was terminated wef 03/11/2013, against which the petitioner preferred an appeal before respondent No.1, who set aside the cancellation and reduced the penalty to closure of the shop for 45 days by suspension of the license under Rule 67-H of the Rules, 1945. The impugned order indicates that the violation of Rules 65(2) and 65(3) of the Drugs and Cosmetics Rules, 1945 are admitted by the petitioner, (page 61). However, it is only the quantum of punishment which is being questioned.

3. The contention by Mr. Mate, learned counsel for the petitioner is that the action of the petitioner, falls within the clauses A to D of the proviso to Rule 67-H of the D & C of the said Act, as the petitioner had merely gone to the Clinic of the Doctor to clarify the name of the drug prescribed and that was the reason for his absence at the time of inspection. The other ground is raised is that since the carbon paper was much utilized the signature on the original bill was not faithfully copied. These reasons were given by the petitioner in his explanation dated 19/08/13 (page 38), which do not appear to have been considered by respondent No.1 in the impugned order. However, since the violation stood admitted as is indicated in the arguments recorded in the impugned order, the conversion of the penalty from

cancellation to suspension cannot be faulted with, but, considering the reasons given and non-consideration of the same in the impugned order, the period of suspension is hereby reduced to 15 days. The petition is hereby partly allowed in above terms. No costs.

4. It is made clear that any further violation by the petitioner shall be strictly dealt with.

(AVINASH G. GHAROTE, J.)

MP Deshpande