



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.24579 of 2022

and

W.M.P(MD)No.18650 and 18653 of 2022

K.Thangarajan

..Petitioner

Vs

1.The Director,
The Director of Drugs Control,
Chennai -600 006.

2.The Assistant Director,
Office of the Assistant Director of the Drugs Control,
Madurai South Zone,
Madurai.

3.The Drugs Inspector,
Thirumangalam second Range,
Madurai South Zone,
Madurai.

4.The Inspector of Police,
Theppakulam Police Station,
Madurai City.

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the impugned order passed by the second respondent in Proc.No. 2852/M1/2022, dated 19.10.2022 and quash the same as illegal.

For Petitioner :Mr.T.Lajapathi Roy
for Mr.A.Balaji



WEB COPY



2

For Respondents :Mr.D.Sadiq Raja
1 to 3 Addl.Govt.Pleader

For Respondent-4 :Mr.B.Thanga Aravindh
Govt.Advocate(Crl.Side)

ORDER

The petitioner has filed this Writ Petition seeking to quash the impugned order passed by the second respondent in Proc.No. 2852/M1/2022, dated 19.10.2022.

2.Mr.D.Sadiq Raja, learned Additional Government Pleader takes notice for the respondents 1 to 3 and Mr.B.Thanga Aravindh, learned Government Advocate (Criminal side) takes notice for the fourth respondent.

3.The case of the petitioner is that he is running a Medical Shop in the name and style of Madura Medical Centre at Kamarajar Salai, Madurai and is having a licence to stock and sell the drugs, which is valid upto 20.12.2026, vide drug Licence No.MDU/379/20, MDU/379/21, dated 21.12.2021, issued under Form-20 and 21 by the second respondent under the Drugs and Cosmetics Act, 1940 [hereinafter referred to as "the Act"].

4.According to the petitioner, the said Medical shop was originally established by his father namely, Kulanthai. After his demise, the



petitioner is taking care of the business for the past 22 years. Neither his father nor the petitioner has given room for any complaint and they have duly complied with the conditions of licence for the past 40 years and have not acted in contravention of the Act. While so, the fourth respondent conducted raid at the petitioner's shop on 04.08.2022 at about 11.00 am. and arrested the petitioner stating that he had sold some medicines without any prescription. The fourth respondent Police also registered a case in Crime No.391 of 2022, dated 04.08.2022 under Sections 8(c) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 77 of the Juvenile Justice Act. While conducting raid, the third respondent also joined with the fourth respondent. But, the fourth respondent has not allowed the petitioner to give the details of inwards and the sales bills to the third respondent. On the very same day, the fourth respondent has hurriedly remanded the petitioner to judicial custody and on the very next day, *i.e.*, on 05.08.2022, the third respondent has sealed the medical shop of the petitioner without ascertaining whether he has the bills for the sale of the alleged drugs.

5.Further, according to the petitioner, while he was in judicial custody, the third respondent has served the show cause notice dated 10.08.2022, asking him to explain as to why his licence should not be cancelled for contravention of the provisions of the Act and the Rules



framed thereunder. After coming out on bail, the petitioner gave his reply, dated 26.08.2022 to the third respondent and thereby, requesting him to unseal the medical shop premises, so as to enable him to produce the bills for the alleged sales. But, the third respondent has not considered the petitioner's reply and has not taken any further action on the show cause notice, dated 10.08.2022. Hence, the petitioner made a representation to the first respondent to unseal the shop premises so as to enable him to produce the bills for the alleged sales. Without considering the same, the second show cause notice dated 10.10.2022, was issued by the second respondent as to why his licence should not be cancelled for contravention of the provisions of the Act and the Rules framed thereunder. The petitioner has given a reply dated 11.11.2022 to the third respondent and thereby, requesting him to unseal the medical shop premises, so as to enable him to produce the bills for the alleged sales. The second respondent, without giving him an opportunity to get the inwards and outwards maintained inside the shop, passed the impugned order, vide his proceedings in Proc.No.2852/M1/2022, dated 19.10.2022, and thereby, cancelled the drug licence, by invoking Rules 66(1) of the Drugs Rules, 1945. Challenging the same, the petitioner has filed the present Writ Petition.

6.The learned counsel appearing for the petitioner submitted that

the second respondent has passed the impugned order in violation of the



principles of natural justice and the petitioner has documents to show that the sales were good and valid, but the same was inside the sealed medical shop premises and the petitioner was not given an opportunity to go through the inwards and outwards maintained in the medical shop. The sale of certain drugs tabulated in the show cause notice was not on a single day, but was on various dates.

7.The learned counsel appearing for the petitioner further submitted that the petitioner's medical shop has the stocks of medicines worth about Rs.15 Lakhs and if the shop is not unsealed, the validity of the drugs would expire automatically and certain drugs have to be maintained in a particular temperature, otherwise, it could not be used.

8.The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the petitioner has failed to comply with the conditions of licence as per the Drugs Rules, 1945 and the explanation offered by the petitioner is not satisfactory. Before passing the order, all opportunities were given to him to put forth his case. Therefore, the licensing authority under the powers vested on him under Rule 66(1) of the Drugs Rules, 1945, has rightly cancelled the petitioner's drug licence.

9.The learned Additional Government Pleader appearing for the



respondents 1 to 3 further submitted that the records, which were produced by the petitioner at the time of inspection were returned to him after taking certified copies of the same under acknowledgment for receipt of the same. Hence, the allegation made by the petitioner in the affidavit filed in support of the Writ Petition that he was not provided with any opportunity to peruse the documents is false and prayed for dismissal of the Writ Petition.

10. Today, when the matter was taken up for hearing in pre-lunch session, this Court directed the learned Additional Government Pleader to furnish the certified copies of the documents, which were produced at the time of inspection to the petitioner. Accordingly, during post-lunch session, the Additional Government Pleader furnished the certified copies of the documents to the learned counsel appearing for the petitioner.

11. Since the copies of the documents sought for by the petitioner have been furnished to the learned counsel appearing for the petitioner, the petitioner is directed to peruse the same and submit his explanation to the second respondent on or before **03.11.2022**. On receipt of the same, the second respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, on or before

14.11.2022 and report the same before this Court on **16.11.2022**.

**12.List the matter on 16.11.2022.**

WEB COPY

13.The Petitioner has sent his explanation on 29.10.2022 which was received by the respondents on 2.11.2022. The same was considered by the authorities and drug license was issued to the Petitioner which is valid upto 20.12.2026 vide drug Licence No.MDU/379/20, MDU/379/21, dated 21.12.2021 issued under Form-20 and 21 by the second respondent under the Drugs and Cosmetics Act, 1940. The order passed by the authorities was challenged before this Court and the Petitioner was directed to give explanation and the explanation was received by them and the averments were taken for consideration by the authorities concerned. After considering the materials available, the authorities were of the view that majority of the drugs were scheduled drugs and that M/s Madura Medical Centre situated at 178A, Kamarajar Salai, Madurai-9 has sold drugs specified in Schedule H and H1 without the prescription of a registered medical practitioner and in the absence of the personal supervision of the endorsed Registered Pharmacist and also without raising cash or credit bills. The said Act was in contravention with Section 18(c) of the Drugs and Cosmetics Act, 1940 read with Rule 65(2), rule 65(3)(1), 65(4)(3)(i), Rule 65(9)(a) of the Drug Rules, 1945 and there is no room for any leniency for such irresponsible and negligent act against the safety of the society. Hence an exemplary action deserves to be taken against the Petitioner Medical Centre for such sheer violation and



contravention perpetrated so that such action shows as a deterrent to other offenders or Drugs and Cosmetics Act, 1940 and Drug Rules. Hence the licensing authority under the powers vested under Rule 66(1) of Drug Rules 1945, passed an order stating that the Poetitioner in Form No.20 and 21 bearing numbers MDU/379/20, MDU/379/21 dated 21.12.2021 and retained upto 20.12.2026 are hereby cancelled. It is further ordered that the Petitioner may prefer an appeal against the above order and the same should be addressed to the State Government which shall decide the same within three months under Rule 66(2) of the Drugs Rules 1945 from the date of receipt of the order.

14The Petitioner has originally challenged the order passed by the authority cancelling his license on the ground that no opportunity was given to him and he was on the same date arrested and remanded to judicial custody and he was not having the relevant documents and they are all in the custody of the respondents. The Petitioner wanted to give explanation and also to provide due opportunity. Even though the Petitioner was released on bail, he could not open the shop, as it was kept under lock and seal. The documents which is needed for giving explanation were taken away by the respondents and this Court directed the Government Pleader to get instructions. Accordingly, the Government Pleader on instructions and submitted that the Petitioner has offered his explanation on 29.10.2022 and the same was considered by the



authorities on 9.11.2022 reiterating their stand and the license issued in favour of the Petitioner was cancelled on the ground that there is violation of the rules. As it is a decision taken by the authorities, who are experts in this field, this Court is not inclined to interfere with the order passed by the said experts/authorities.

15The Petitioner has got an statutory appeal remedy before the State Government ie., before the Secretary to the Government, Government of Tamil Nadu, Public Health and Family Welfare Department, fort St.George, Chennai – 600 009 in the prescribed format under Section 66(2) of the Drug Rules, 1945 and the Petitioner can avail the said remedy of statutory appeal, if so advised, as aforestated.

16.With the above observation, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

16.11.2022

Index : Yes/No

Internet:Yes/No

vsn

To

1.The Director,

The Director of Drugs Control,



Chennai -600 006.

2. The Assistant Director,
Office of the Assistant Director of the Drugs Control,
Madurai South Zone,
Madurai.
3. The Drugs Inspector,
Thirumangalam second Range,
Madurai South Zone,
Madurai.
4. The Inspector of Police,
Theppakulam Police Station,
Madurai City.



WEB COPY



11

V.BHAVANI SUBBAROYAN,J
vsn

ORDER MADE IN

W.P(MD)No.24579 of 2022
and
W.M.P(MD)No.18650 and 18653 of 2022

16.11.2022



WEB COPY





WEB COPY





WEB COPY





WEB COPY





WEB COPY

