

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203

CWP No.30585 of 2018 (O&M)
DATE OF DECISION : 2nd AUGUST, 2022

Vinod Kumar Arora

.... **Petitioner**

Versus

**Postgraduate Institute of Medical Education and Research
(PGIMER), Sector-12, Chandigarh through its Director & another**
.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

The petitioner has filed this petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing the impugned letters dated 22.10.2018 and 24.11.2018 (Annexure P-6 & P-8).

The facts of this case, in short, are; that the petitioner was a licensee of chemist shop at Level-2, New OPD Block, PGIMER, Chandigarh. His license was governed by terms and conditions which stipulated that the petitioner would sell the medicines only as prescribed by the Doctors. In case of violations of the terms and conditions, the petitioner was liable to pay the penalty, if imposed by the appropriate authority. A patient had raised a complaint that the petitioner had sold a medicine other than the one prescribed by the Doctor. On that complaint the impugned orders imposing penalty of ₹2,34,905/- have been passed.

Challenging the said orders, the present petition has been filed by the petitioner.

The counsel for the petitioner has submitted that the petitioner had not forced the said patient to purchase the alternate medicine other than the one prescribed by the Doctor. The petitioner had only apprised the said patient that the medicine prescribed by the Doctor was not available with him and thereafter, the said patient had voluntarily accepted the alternate medicine. Hence, the petitioner could not have been penalized. Moreover, the impugned orders have not been passed by the competent authority. Under the terms of the license it is only the Director, PGIMER, Chandigarh, who could have passed the order. However, in the present case the orders have not been passed by the Director. Hence, the same are liable to be set aside.

On the other hand, the counsel for the respondents has submitted that as per the terms of the license; the petitioner was prohibited from selling any alternate medicine other than the one prescribed by the Doctor. Even if some alternate medicine was to be sold then the written concurrence of concerned Doctor was required. Undisputedly, the petitioner had not sought any written concurrence from the Doctor and had sold the alternate medicine to the patient. Therefore, the penalty has rightly been imposed upon him. The counsel has further submitted that the impugned orders have been passed only after due approval from the competent authority, i.e., Director, PGIMER, Chandigarh. Hence, the present petition deserves to be dismissed.

Having heard the counsel for the parties, this court does not find any substance in the arguments raised by counsel for the petitioner. A perusal of the terms of the license shows that the petitioner was

restrained from selling any alternate medicine to any patient except on written concurrence of the concerned Doctor. In the present case, there is nothing on record to show that any written concurrence was obtained from the Doctor. Instead, the case of the petitioner is that the patient had purchased the said medicine voluntarily on being apprised by the petitioner that the medicine prescribed by the Doctor was not available with the petitioner. This assertion of the petitioner itself establishes that he has violated the terms of the license. Of course, the prescription of the Doctor in the present case had permitted the petitioner to sell alternate generic medicine; however, it is not even the case of the petitioner that the medicine sold by the petitioner to said patient was a generic medicine. Hence, this court does not find anything illegal in the orders passed by the respondents. Qua the competent authority to pass the order as well, this court finds substance in the argument of the counsel for the respondents that the orders have been passed with due approval of the competent authority. Once the competent authority has already approved the order on file, then the same can be issued by any authorized person. That would not vitiate the order as such.

In view of the above, finding no merit in the present petition the same is dismissed.

All the pending applications, if any, stand disposed of accordingly.

2nd AUGUST, 2022
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>