

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.65 of 2022

In

Civil Writ Jurisdiction Case No.6136 of 2020

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M/s New Green Medical Hall represented by Proprietor Md. Mahmood Alam, (Male), aged about 51 years, son of Md. Sattar Ansari, Premise situated at Naya Bazar, Lakhisarai, Resident of Punjabi Mohalla, Ward No. 16, P.S.-Kabaiya, District-Lakhisarai.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. The State Drug Controller-cum-Drugs Controller-cum-Chief Licensing Authority, New Secretariat, Bihar, Patna.
3. The Assistant Drug Controller, Drug Control Administration, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Sah, Advocate

For the Respondent/s : Mr. S.D. Yadav, AAG-9

Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

The writ petition was filed against the order of the Assistant Drugs Controller, Lakhisarai; the licensing authority, who cancelled the appellant's licence issued under Chapter-VI of the Drugs and Cosmetics Rules, 1945 (for brevity, 'the Rules of 1945').

2. The learned Single Judge dismissed the writ petition on the ground of available alternate remedies and also rejected the contention of the appellant that in fact there could have been a suspension of licence, with respect to the specific



commodity, on which an objection was raised; which would have allowed the petitioner to continue the business.

3. We heard the learned counsel for the appellant and the learned Government Advocate.

4. At the outset, we have to state that when the learned Single Judge has refused to exercise discretion, and not permitted the writ petitioner to bypass the alternate remedy by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India; it is not for the Appellate Court to say otherwise and substitute its wisdom as against the denial of discretion by the learned Single Judge.

5. We find on a reading of the judgment impugned that the learned Single Judge has elaborately considered the contention with respect to a lesser penalty of suspension of licence, as prayed for by the appellant's counsel; which the appellant raised before us also, relying on a decision of this Court in *Universal Drug House Private Limited vs. State of Bihar and others (AIR 2004 Patna 86)*.

6. On the facts of the above case, the Assistant Drugs Controller, Lakhisarai conducted an inspection in the appellant's business premises and found a number of deficiencies. That the pharmacist was absent, the licensee



indulged in black marketing of hand sanitizers, selling sanitizers, far above the price indicated by the Ministry of Consumer Affairs, Food and Public Distribution in a notification dated 21.03.2020, sales invoices not been up to date, drugs being sold without issuance of sales invoice, alteration in recent sales invoices issued and purchase records of drugs having not been maintained. A show-cause notice was issued and there was no response by the appellant. A further show-cause notice was responded to, which letter in reply, was specifically extracted by the learned Single Judge.

7. The appellant's defence was that the pharmacist had gone for his meal, the purchase documents not available in the business premises were enclosed with the show-cause reply, the notification issued by the Ministry of Consumer Affairs was not within his knowledge.

8. We cannot but observe that the admission of a licensee, who has obtained licence under the Drugs and Cosmetics Act, about the notification issued regarding the price control of hand sanitizers; more pertinently during the period of the pandemic, cannot be countenanced. Further, the purchase invoices submitted, indicates the purchase having been made at a discounted rate of Rs. 36/- and sale made at a far higher rate;



in violation of the price control notification issued. The invoices also did not contain the name of the manufacturer, the seller's GST details and the signature of the competent authority. The absence of such essential details created a suspicion in the mind of the licensing authority and one of the sale invoices was send to the Assistant Drugs Controller, Patna. The Assistant Drugs Controller, Patna informed the licensing authority that there was no such wholesale dealer, in the name shown on the invoices. It was hence the licensing authority refused to accept the appellant's explanation and cancelled the licence.

9. The learned Single Judge also found that the cancellation effected, with reference to the gravity of the allegations made, cannot be termed as onerous. The licensing authority has specifically found, based on the enquiry conducted with respect to the purchase invoices produced, that such a trader was not available and that the invoices were forged and fabricated. The writ application does not say anything on the proof of the existence of the trader shown in the purchase invoice.

10. The learned Single Judge also considered the case of *Universal Drug House Private Limited* (supra) in which, objection was raised only against two commodities,



which resulted in a suspension and not a complete cancellation being upheld; while the Court specifically observed that the provision envisages both a partial suspension or a complete revocation of licence; which we also discern from the provision. Therein the defect noticed was a combination of Allopathic and Ayurvedic components used in combination, in one of the commodities; prohibited by a notification under the Drugs and Cosmetics Act and the overpricing of a tablet; against the price control notification issued by the State. These were found to be technical breaches not warranting absolute revocation of license.

11. However, in the instant case the learned Single Judge emphasized the specific commodity, hand sanitizers, having attained a particular level of demand and therapeutic qualities in the wake of the pandemic and pertinently highlighted the fact of many traders having misused the unprecedented circumstances of the pandemic to obtain undue profits for themselves. The very fact that the appellant produced fraudulent invoices to support the sale price puts the offence beyond the pale of a technical one.

12. In the totality of the circumstances, we find absolutely no reason to interfere with the judgment. We dismiss the same, but howsoever, leaving him to the appellate remedy



which, however, shall be on just exceptions also with due, deference being given to the observations made by the learned Single Judge on the gravity of the allegations, which stood uncontroverted, as expressed by the learned Single Judge and affirmed by us.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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