

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4992 of 2023

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M/S Mayank Enterprises Represented by Proprietor Kishor Shilpi (male) aged about 53 years, S/o Ramji Prasad, Premise situated Baement New Uda Place G.M Road, Patna R/o - 103 Ist Floor Flat Parnav Menson Park, Kadamkua, P.S. Kadamkua, District – Patna ... Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
 2. The State Drug Controller-Cum-Chief Licensing Authority, New Secretariat, Bihar, Patna.
 3. The Assistant Drug Controller, Drug Control Administration Patna.
- ... Respondents

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Appearance :

For the Petitioner : Mr.Ram Shankar Das, Adv.
For the Respondents : Mr.Ajay Behari Sinha, GA VIII with
Mr. Suryakant Kumar, AC to GA VIII

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT

Date : 18-10-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

i. To quash the Appellate order dt.27.12.2022 as contained in Memo no.1264(15) in appeal case.no.08/2022 passed by the Appellate Authority-cum-Secretary Health Department Government of Bihar whereby and where under appeal filed by the petitioner has been rejected without considering the record with all essential documents material available on the record. The Appellate order is very cryptic order without expressing & analysing own mind non speaking order without assigning reason which are the link between facts founded & the decision taken.

ii. To quash the order dt. 17.03.2022 vide Memo No. 328 passed by the Assistant Drug Controller, Patna



whereby the license of the petitioner has been cancelled on non-est ground & without application of mind & without considering the reply of show cause. So that the impugned order is wholly without jurisdiction & not sustainable in the eye of law & also against the provision of law.

iii. To treat the wholesale licence No. PAT 328/2011 FORM-20B and PAT 328A/2011 (FORM-21B) issued on 08.09.2011 valid and operative as per Rule-66(b) proviso.

3. Learned counsel for the respondents has stated that both the orders of the appellate as well as the orders passed by the Assistant Drug Controller, Patna, are liable to be set aside on the ground of non application of mind, contrary to the principles of law and also the judgments of this Hon'ble Court. Learned counsel has stated that pursuant to the inspection that has taken place on 21.01.2020 the authorities have issued a show cause notice to the petitioner alleging violations of the provisions of Drugs and Cosmetic Acts (hereinafter referred to as, 'the Act') to which the petitioner has given a suitable reply. However, the Assistant Drug Controller without adverting to the explanation submitted by the petitioner has passed the order in a mechanical manner. That the order passed by the Assistant Drug Controller does not take into consideration the explanation submitted by the petitioner and is a non-speaking one. That aggrieved by the orders of cancellation passed by the Assistant Drug Controller vide



Memo No. 328, dated 17.03.2022, the petitioner has preferred an appeal before the Appellate Authority-cum-Secretary Health Department, Government of Bihar, vide Appeal Case No. 8 of 2022. That the Appellate Authority did not consider the grounds of appeal nor the material placed before it and passed the order rejecting the appeal vide memo no. 1264(15), dated 27.12.2022. Learned counsel has stated that the Appellate Authority without verifying the allegations made and also the material placed by the petitioner has passed the impugned order in a mechanical manner. Learned counsel has relied on the judgment of this Hon'ble Court in the case of **Universal Drug House Private Limited Vrs. State of Bihar & Ors.** reported in **2002(3) PLJR, 771**.

4. Learned counsel has stated that the allegations made against the petitioner are very trivial in nature and ought to have been ignored by the authorities, but, instead the authorities have cancelled the license granted to the petitioner which is still in subsistence. Learned counsel has stated that the petitioner was engaged in the business of selling drugs and a wholesale dealer since 2011 and till date there are no complaints against him. That the order is liable to be set aside as the valuable right of the petitioner has been effected which is contrary the judgment passed by this Hon'ble Court in the above cited case.



5. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has approached this Hon'ble Court with unclean hands. Learned counsel has stated that the authorities have conducted the inspection on 21.01.2020 and on inspection they found that the petitioner is in possession of narcotic drugs which are prohibited. The petitioner did not have any license to sell the prohibited drugs nor any sale invoice or any prescription. Even though the petitioner has taken stand that the narcotic drugs found in his possession were for his personal use, no prescription of Doctor or sale invoices was produced by the petitioner. At the time of inspection it was found that the petitioner was having the following prohibited drugs :

*a. Anxit 0.25 (Alprazolam tablets) and Wiscof Syrp
100 ml*

b. 1 vial of Ketamine Hydrochloride

c. 1 vial of Physicians Sample of MERO-SB 1.5 gm

Besides the above it was found that the petitioner was not having any purchase or sale invoices for 29 drugs.



6. Though the petitioner produced a photo copy of 18 purchase bills on verification it was found that details and matching batch numbers for only two drugs. Learned counsel has stated that for the drugs Anxit 0.25 (Alprazolam tablets) and Wiscof Syrp 100 ml and 1 vial of Ketamine Hydrochloride the petitioner is obligated to have the license in Form 20F or 20G. That possession of narcotic drugs is serious offence which cannot be condoned by any stretch of imagination and the authorities duly taking into consideration the fact that the petitioner did not have necessary prescription, the invoice nor the license, has cancelled the license of the petitioner. That the Appellate Authority duly taking into consideration the relevant facts has passed the order which is perfectly in consonance with the provisions of the Act and the order is a well reasoned one which does not call for any interference by this Court, therefore, learned counsel has prayed to dismiss the present Writ Petition.

7. Admittedly, in the present case the inspection of the premises of the petitioner was conducted on 21.01.2020 and in the said inspection it was found that the petitioner was having the following drugs :

*a. Anxit 0.25 (Alprazolam tablets) and Wiscof Syrp
100 ml*



b. 1 vial of Ketamine Hydrochloride

c. 1 vial of Physicians Sample of MERO-SB 1.5 gm

Even though the petitioner has taken the stand that the above mentioned drugs are for his personal use and were not being sold, the facts remain that the petitioner could not produce any prescription from any qualified Doctor nor could he produce any invoice showing that the same has been purchased by him. Even if the contention of the petitioner that these are minor lapses for which license of the petitioner cannot be cancelled, it is to be noted that the petitioner was found selling 29 different types of drugs for which the petitioner did not have the requisite purchase bills or invoices. The copies of the purchase bills produced by the petitioner did not match the batch number of the drugs that were sold and out of the 18 purchase bills produced by the petitioner only the batch number of two drugs were found to be genuine. Therefore, the contention of the petitioner that the lapses, if any, are minor in nature for which the license of the petitioner cannot be cancelled is without any substance. Though the petitioner has relied on the judgment cited so far to buttress his case the fact remains that the petitioner has been selling as many as 29 different varieties of drugs without maintaining any purchase or sale records,



which by itself is a serious offence and the same cannot be said to be a minor lapse and condoned. The possession of any narcotic drugs without any proper prescription or purchase invoice is a serious offence and cannot be condoned. The explanation given by the petitioner that the prohibited drugs are for his personal use cannot be believed in the absence of any prescription from a qualified Doctor or purchase bills in his name. The order passed by the appellate as well as the primary authority are well reasoned orders and do not call for any interference and this Court does not find any merit in the present Writ Petition which warrant any interference by this Hon’ble Court.

8. The Writ Petition is liable to be dismissed and the same is accordingly, **dismissed**.

(A. Abhishek Reddy , J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	10.10.2023
Uploading Date	25.10.2023
Transmission Date	NA

