

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 700 OF 2023

**M/s. Lifeline Medical & General
Stores Chemist and Drugs**
Through Proprietor
Mustafa Hanif Sirkhot
Age:- 53 Years, Occp:- Medical Shop
Having Address at :- Shop No.3,
Z-Complex, Opp. Raut Hospital, Near
S.T. Stand, Mhasla, District – Raigad.

.. Petitioner

Versus

**1. Assistant Municipal Commissioner
Food & Drugs Administration &
Licensing Authority, Maharashtra State**
Office at:- Shree Yash Plaza, 2nd Floor,
Pen, Dahrmatar Road, at Post Pen.
District- Raigad.

2. The Minister of Foods and Drugs
Administration,
Address Mantralay, Mumbai.

3. State of Maharashtra

.. Respondents.

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- Mr. Satish K. Kumbhar, Advocate for Petitioner.
 - Mr. P.G. Sawant, AGP for the Respondents – State.
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CORAM	: MILIND N. JADHAV, J.
Reserved on	: FEBRUARY 08, 2023
Pronounced on	: FEBRUARY 13, 2023

JUDGMENT :

1. By the present Writ Petition, the Petitioner has prayed for the following reliefs:-

“a. That this Hon'ble Court be pleased to issue writ of certiorari or any other appropriate writ, order or direction under article 227 of the Constitution of India, whereby this Hon'ble Court be pleased to quash and set aside the impugned Order dated 29/06/2022 passed by this Hon'ble Minister Appeal No. 435 of 2018, thereby the order dated 10/09/2019 passed by the Licensing Authority, partly allowed and suspended the Certificate of License for 90 days (from 09/01/2023 to 08/04/2023) instead of termination /cancellation.

c. The Impugned order dated 30/07/2018 passed by the Assistant Commissioner (Medicine) & Licensing Authority, Food and Drug Administration, Maharashtra State, Pen, Raigad, in Case No. Cancellation order /29 486-2018/2, under rule 66(1) & 67(h) (1) of Drugs & Cosmetics Act, 1940 and Rules 1945 thereunder as well as Show Cause Notice 18/07/2018 issued by the Assistant Commissioner (Medicine) & Licensing Authority, Food and Drug Administration, Maharashtra State, Pen, Raigad, kindly be quashed and set aside.”

2. Respondent Nos.1 to 3 are the statutory authorities established under the State.

3. Briefly stated, the facts are as under:-

3.1. Petitioner is carrying on business of General Stores of Chemist and Drugs (*Medial Store/Shop*) at Shop No.3, Z-Complex, Opp. Raut Hospital, Near S.T. Stand, Mhasla, District – Raigad since the last 17 years and holds a valid license since 2008.

3.2. The said license has been renewed from time to time since 2008 and is valid and subsisting as under:-

License Form	License No.	From	To
20	256347	30/01/2008	29/01/2023
21	256349	30/01/2008	29/01/2023
20-C	256348	01/01/2013	29/01/2023
20-B	66702	01/01/2013	29/01/2023
20-B	33703	01/01/2013	29/01/2023
20-C	256348	30/01/2023	29/01/2028

3.3. On 08.06.2018, Mr. U.G. Bhagmare, Drug Inspector, Raigad visited the Medical Store of the Petitioner and carried out inspection. After the inspection he recorded his observations in writing in the prescribed format and prepared Inspection Report.

3.4. On 18.07.2018, Show Cause Notice was issued to Petitioner under the Drugs and Cosmetics Act, 1940 and Rules, 1945 (for short “**the said Act and Rules**”) alleging that Petitioner had violated Sections 18(c) and Rules 65(2), 65(3)(1), 65(6), 65(4)(i), 65(4)(3), 65(4)(4), 65(4)(4)(ii) of the said Act.

3.5. On 25.07.2018, Petitioner filed reply to the Show Case Notice offering explanation.

3.6. On 30.07.2018, Order was passed by Respondent No.1 - the Assistant Commissioner Food & Drugs Administration & Licensing Authority, Maharashtra State holding that Petitioner had violated the conditions of the license and as per power of vested under Rules 66(1) & 67 (h) of the said Act and Rules, Petitioner’s license was cancelled from 29.08.2018 onwards.

3.7. Being aggrieved Petitioner filed Appeal before the Appellate Authority, who by an Order dated 01.09.2018, granted temporary stay to the Order of Respondent No.1. The Appeal came to be decided

subsequently by Order dated 29.06.2022, wherein the Appeal was partly allowed and the certificate of license was suspended for 90 days, starting from 09.01.2023 till 08.04.2023.

3.8. Hence, the present Writ Petition came to be filed.

4. Mr. Kumbhar, learned Advocate appearing for the Petitioner has made the following submissions:-

- (i) that the Impugned Notice as well as Orders are grossly erroneous and contrary to judicial norms as laid down under the law disregarding the established principles of natural justice;
- (ii) that the Order passed by Respondent No.2 suspending the license for 90 days is against the provisions of law and therefore not maintainable;
- (iii) that Respondent No.2 has not considered the provisions or exceptions as mentioned in the said Act and Rules before passing the impugned Order;
- (iv) that Petitioner has been carrying on the business of General Stores of Chemist and Drugs Shop since 17 years and holding a valid drug licence and the said licence has been renewed from time to time and is valid and subsisting;

- (v) that for the past 17–18 years there were no allegations against the Petitioner under the said Act and Rules;
- (vi) that Petitioner submitted his written statement/reply to the Show Cause Notice and explanation was given by Petitioner clarifying the bills and he had also given an undertaking that in future such violation will not happen;
- (vii) that Review Petition for review of order dated 29.06.2022 was filed before the Hon'ble Minister of Food & Drug Administration, Mantralaya Mumbai was still pending and is not decided finally and that the Petitioner was suffering because of the suspension of license since 09.01.2023 without any income.

5. ***PER-CONTRA***, Mr. Sawant, learned AGP appearing for the State has supported the findings in the impugned Order.

6. I have heard the learned Advocates appearing for both the parties and with their able assistance perused the record and pleadings in the present case.

7. At the outset, it is seen that the Petitioner is running his medical shop since 17 years and is holding a valid license for the same and the said license is renewed from time to time which is still valid and subsisting.

8. From perusal of record it is seen that Petitioner is holding the license for carrying on business of General Stores of Chemist and Drugs shop for the last 17 years. The said license was originally granted on 30.01.2008 and has been renewed and revalidated by the Competent Authority until 2028. Record indicates that for the past 18 years there is no dereliction on the part of the Petitioner of any of the provisions of the said Act and Rules and that the Petitioner has conducted his business without blemish. It is seen that on 08.06.2018 the Drug Inspector visited the medical store of Petitioner and carried out inspection. He prepared Inspection Report dated 08.06.2018 which is a handwritten Inspection Report annexed at Exhibit-D to the Writ Petition. On the basis of the said Inspection Report, Show Cause Notice was issued to Petitioner on 18.07.2018, *inter alia*, alleging that the owner i.e. Pharmacist Mr. Mustafa Hanif Sirkhot was not present during his visit and in his absence certain drugs were sold across the counter by giving duly valid bills. It was alleged that during the said time sale of six tablets of Extacef, Batch No.TC1801 and six tablets of Emusulide, Batch No.DBC17002 was made across the counter in the absence of the Pharmacist. That apart, it was alleged that the purchase bill of these drugs was not made available and showed to the Drug Inspector. Petitioner was therefore informed to furnish the said bills within two days thereafter. In the Show Cause Notice, it was further alleged that drugs sold on 02.05.2017, 01.09.2017, 02.02.2017,

01.04.2017, 02.03.2017 and 02.02.2017 to one Mr. Azim S. Harnekar vide six bill numbers reproduced in the Show Cause Notice were investigated and it was found that there was some discrepancy in the bill date on the copies available with the Petitioner. Finally it was also alleged that the number of medicines was not maintained properly and the bills were not arranged chronologically.

9. In that view of the matter, the Show Cause Notice came to be issued alleging violation of Section 18(c) of the said Act read with the provisions of Rule 65 of the said Rules. Petitioner was called upon to furnish his explanation alongwith documentary evidence within five days thereafter. It is seen that Petitioner vide letter dated 26.07.2018 furnished his explanation as under:-

- (i) that in respect of the principal charge that said drugs were sold across the counter in the absence of the Pharmacist, it was stated that the said drugs/medicines were actually sold by the Pharmacist Mr. Mustafa Hanif Sirkhot and he was infact present at the counter table;
- (ii) that sale of Extacef tablets and Emusulide tablets under bill No.18939 was prepared by himself i.e. Pharmacist Mr. Mustafa Hanif Sirkhot; that apart, the purchase bill of the said tablets was submitted with the office of the Assistant Commissioner on 18.06.2018 and the

acknowledgment receipt of the same was annexed to the reply;

- (iii) that the discrepancy found on some of the bills in respect of the sale of drugs to Mr. Azim Harnekar was due to an inadvertent mistake whereby though the bills were prepared by him i.e. Pharmacist Mr. Mustafa Hanif Sirkhot, he had inadvertently and by mistake not put some of the dates therein;
- (iv) that as desired by the Competent Authority revalidation and renewal of the license were already reflect in the bill book;
- (v) that in so far as the purchase bills of the drugs and medicines mentioned in the Show Cause Notice were concerned, all such available purchase bills were informed and copies of the same were submitted in the office of the Assistant Commissioner. That some of the purchase bills could not be submitted as the same were submitted to the Chartered Accountant of the Petitioner.

10. The aforementioned reply was considered by the Competent Authority and the impugned Order dated 30.07.2018 was passed. Perusal of the impugned Order dated 30.07.2018 reveals that the

Competent Authority has after considering the entire details of the sale and purchase of the drugs and medicines by the Petitioner as opined that all sales of medicines throughout the world are done across the counter only on prescription and therefore sale of any drugs without prescription which was seen in the case of the Petitioner was violative of Rule 65 of the said Rules and not pardonable. It is also opined and concluded in the impugned Order dated 30.07.2018 that one of the reasons for selling the drugs across the counter without prescription was so that the drugs could be sold without prescription at a higher rate and this could also lead to adulteration and sale of fake drugs, a possibility which could not be ruled out. On the aforesaid conclusion, the Competent Authority vide Order dated 30.07.2018 held that Petitioner had committed breach of the Rule 65 and was therefore liable for penal consequence under the provisions of Rule 66(1) and 67(h)(1) and therefore cancelled the license of the Petitioner.

11. Being aggrieved Petitioner filed Appeal being Appeal No.435 of 2018 before the Appellate Authority who has passed the impugned order dated 30.11.2022 which is under challenge. Perusal of the said order reveals that the Petitioner's explanation has been considered by the Appellate Authority. It is seen that the bills pertaining to the sale of Extacef and Emusulide tablets were prepared subsequently and furnished before the concerned Authority. Further it is seen that drugs

and medicines sold across the counter were sold vide bills which were issued through the computer as well as manual bills were prepared in hand. It is held in the order that there is discrepancy between the actual sale of medicines and drugs as vis-a-vis the Inspection Report prepared by the Drug Inspector, however, no details of any such discrepancies have been mentioned / given in the said order.

12. In that view of the matter, the Appellate Authority held that the Petitioner deserved to be penalised and therefore passed the impugned Order suspending his license from 09.01.2023 to 08.04.2023 for a period of 90 days by setting aside the cancellation order.

13. Mr. Kumbhar has vehemently submitted that the Appellate Authority has merely considered the charges levelled against the Petitioner superficially without dwelling deep into the issue.

14. Mr. Kumbhar is right in contending that the Authority has given cursory findings in the impugned Order. It is seen that all five findings in the impugned Order are cryptic and without reasons. If the Appellate Authority has to come to the conclusion that there is discrepancy between the sale and purchase details given by the Petitioner and the Inspection Report prepared by the Drug Inspector, such discrepancy ought to have been mentioned and stated in the Order. It is seen that no such details are given. That apart, in so far as

sale of Extacef and Emusulide tablets is concerned, the Appellate Authority has accepted the findings that the sale bills in respect of these drugs / medicines were submitted to the Authority subsequently. These are the two principal findings which compelled the Authority to revoke the cancellation and reduce the penalty to suspending the license for 90 days. Perusal of the impugned Order and the record of the case reveals that penalty imposed by the the impugned Order is harsh and not commensurate with the reasons provided therein. He would submit that a Review Petition against the impugned Order was filed and the same is pending decision. However, the penalty imposed on the Petitioner has since commenced from 09.01.2023 and in that view of the matter, the Petitioner is without livelihood since 09.01.2023 and has already suffered from the past one month with his shop premises being shut.

15. Petitioner has filed Affidavit dated 07.02.2023 wherein he has expressed remorse and tendered his unconditional apology for the inadvertent discrepancy that has been found in the record by the Drug Inspector and noted in the Inspection Report. Petitioner has given undertaking to this Court that he shall in future ensure that no such discrepancy happens and that he would conduct his business strictly in accordance with the terms and conditions of the license and the said Act read with the said Rules. This undertaking given by the Petitioner

is accepted as undertaking given to the Court.

16. In view of the above observations and findings, the impugned Order dated 30.11.2022 stands quashed and set aside forthwith considering that the Petitioner has already suffered part of the sentence since 09.01.2023 till today. In view of the setting aside the impugned Order, the Order dated 30.07.2018 also stands quashed and set aside as also the Show Cause Notice issued to the Petitioner.

17. The Petitioner has suffered the sentence partly with the closure of his premises from 09.01.2023 till date. Hence in view of the setting aside of the impugned Order, Petitioner is entitled to conduct his business under the license granted by the Competent Authority w.e.f. today i.e. 13.02.2023.

18. Needless to state that the Petitioner will have to follow all such Rules and Regulations prescribed under the license and the said Act and Rules in respect of conduct of his business.

19. Writ Petition is allowed in the above terms.

20. Writ Petition disposed.

[MILIND N. JADHAV, J.]

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