



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12003 OF 2023

M/s. Om Shanti Chemist

.Petitioner

Vs.

The Assistant Commissioner (Brihanmumbai),
Food & Drugs Administration & anr.

.Respondents

Mr. Kalpesh U. Patil, Advocate, for the Petitioner
Mr. P. G. Sawant, AGP, for Respondent No. 2 - State

CORAM : MADHAV J. JAMDAR, J.

DATE : 06.10.2023

ORAL JUDGMENT

1. The Petitioner is a trustee of a charitable trust which runs a hospital. There is a medical store named 'Om Shanti Chemist' within the hospital premises. The Petitioner is challenging the legality and validity of the order dated 06.10.2021 passed by the Hon'ble Minister, Food & Drugs Administration passed in Appeal No. 162 of 2018.

2. By the said impugned order dated 06.10.2021, the Appeal was partly allowed by reducing the period of suspension of license from 60 days to 15 days.

3. It is the contention of Mr. Patil, learned counsel appearing for the Petitioner that there is no violation of any provisions of the Drugs and Cosmetics Act, 1940. It is his submission that the main allegation is that medicines were sold from the medical store/godown which has no license. However, it is contended that the medical shop having valid licence is situated in the compound of the hospital and the hospital has a valid license and there is a godown in the said hospital premises which also has a separate license. Mr. Patil, therefore, contends that there is no violation of any provisions of law. The learned AGP supported the impugned order.

4. It is significant to note that the Show Cause Notice in this case is dated 26.04.2017. On 29.06.2017, a reply was filed to the said Show Cause Notice. The Assistant Commissioner passed the order on 09.10.2017, by which the license was suspended for a period of 60 days. The Appeal was filed in the year 2018 and there was a stay to the said order passed by the Assistant Commissioner on 09.10.2017. Thereafter, the Appeal was decided by order dated 06.10.2021 and now, the said order is sought to be implemented by passing a fresh order dated 28.08.2023 by the

Assistant Commissioner. Thus, this is a case where, for the alleged violation as mentioned in the Show Cause Notice dated 26.04.2017, action is being taken after about more than five years.

5. A perusal of the impugned order passed by the Hon'ble Minister shows that various points raised in the reply dated 29.06.2017 to the Show Cause Notice are not taken into consideration at all. The said Show Cause Notice dated 27.04.2017 refers to the following violations of the mandatory requirements.

- (i) The original licenses are not displayed;
- (ii) Purchase bills were lying on the table;
- (iii) Although sale is from the pharmacy, the patients were asked to collect the medicines from the basement.

6. (i) As far as the first violation regarding not displaying the original license is concerned, it has been explained that as administrators were abruptly changed, the original licenses were misplaced and the same were later found and are displayed in the pharmacy.

(ii) As far as purchase bills lying on the table are concerned, it is significant to note that it is even mentioned in the order that the bills were found to be having numbers. The only lacuna was that the bills were not properly placed. It has been explained in the reply to the Show Cause Notice that purchase bills maintained were lying on the table, as the same were to be sent to the Manager and were to be placed in a file with serial number and in chronological order.

(iii) In so far as the third violation is concerned that the patients were asked to purchase medicines from the pharmacy and they were asked to collect the same from the basement, it is explained in the reply to the Show Cause Notice that due to space constraint, although pharmacy license is obtained, they could not apply for retail-cum-wholesale license. However, the pharmacy has taken license for additional premises as a Godown for storing medicines which is within the hospital premises in its basement and has the necessary licenses for storage of medicines. It is explained that there is no commercial activity carried out in the godown premises and only medical stock is stored and as and when necessary, same is brought to the pharmacy. Relying on Rule 64 of the Drugs And Cosmetics Rules, 1945, it is submitted

that licensing authority has to satisfy itself that the premises, in respect of which the license is to be granted are adequate, equipped with proper storage accommodation for preserving the properties of the drugs to which the licence applies and is in charge of a person competent in the opinion of the licensing authority to supervise and control the sale, distribution and preservation of drugs. It is his contention that separate licenses are taken for the medical storage and godown for the medicine storage.

7. Perusal of the Show Cause Notice and the Reply makes it clear that the alleged violations are not of serious nature.

8. Apart from the above aspects, it is pointed out by learned counsel appearing for the Petitioner that the said license has been renewed and continued from time to time and even till date, the same has been continued. Learned counsel appearing for the Petitioner has relied upon the decision of a learned Single Judge in the matter of *K. V. Acharya and another Vs. State of Maharashtra and others*, reported in *(2000)3 Mah L J 90* and particularly on paragraphs 4 & 5 of the same, which read as

below:-

“4. Admittedly the original licence granted to petitioners to keep the place of public entertainment has been renewed every year after the first incident as cited in the show cause notice dated 17-04-1992 and the last incident dated 24-03-1995 at Item No. 19 mentioned in the said notice had taken place. Obviously when the aforesaid offences or incidents or breaches were not found sufficient by the concerned authority for denial of renewal of licence to the petitioners, the said offences, incidents or breaches cannot furnish grounds for cancellation or suspension of licence which was renewed after the said offences, incidents or breaches had already taken place. Rule 13-A of the Rules for Keeping Places of Public Entertainment in Greater Bombay framed by Commissioner of Police under section 33 of the Bombay Police Act provides for renewal of licence granted under these rules. Rule 13-A of the said Rules reads thus :-

"13-A. (1) (Addition notification not available) every application for renewal of a licence granted under these rules shall be made at least 30 days before the day on which such licence is to expire. The application shall be accompanied by the license to be renewed and the appropriate amount of fee as specified in Rule 29.

(2) Where an application is made in accordance with sub-rule (1) the premises, in respect of which the licences is to be renewed, shall be deemed to be duly licensed until such licence is renewed and delivered to the applicant or his agent or until an intimation that the renewal of the licence has been refused is communicated to such person.

(3) Any application for renewal of a licence, not made in accordance with the provisions of sub-rule (1), shall be liable to be rejected by the Commissioner of Police.

(4) The Commissioner of Police may refuse to renew the license if he is satisfied after such enquiry as he thinks fit, that the licensee is not suitable a person for continuing to held the license.

5. A perusal of the aforesaid Rule shows that the licensing authority may refuse to renew the license if it is satisfied that the licensee is not suitable person for continuing to hold the licence. Once the licensing authority renews the license despite the omissions, offences and breaches committed by the licensee earlier thereto, it would mean that such licensee has been found to be suitable person for renewal despite the said offences, breaches or incidents and, therefore, the said offences, breaches or incidents could not be considered as ground for suspension of licence when such offences, incidents or breaches were not found sufficient for refusal of renewal of licence. The same view was taken by me in M/s. Hotel K.K. Sansar v. Dy. Commissioner of Police, wherein the identical question was involved. In that case the offences related to the period from 01-01-1995 to 19-12-1997. The licence was renewed in that case after 01-01-1995 every year till 31-03-1999. Despite the fact that there were 27 offences committed by that licensee for the period from 01-01-1995 to 19-12-1997, the licence was renewed for the subsequent year and later on the authorities concerned suspended the licence for the offences committed anterior to the renewal of licenece. When the matter came before this Court, I in paragraph 4 of the judgment held thus:

"4. From the aforesaid statement of charges, it would be seen that the said offences related to the period from 01-01-1995 to 19-12-1997. Mr. Joshi learned A Panel Counsel was candid in admitting that the licence issued to the petitioner for the first time in the year 1991 has been renewed from time to time. He did not dispute the fact that the said licence issued in the name of the petitioner has been renewed in the years 1995, 1996, 1997 and 1998. The last renewal was made on 07-04-1998 which was valid upto 31-03-1999. It is very difficult to appreciate, much less understand, that if the alleged offences were not found sufficient by the competent authority for denial of renewal of licence to the petitioner, how could the said offences furnish grounds for cancellation or suspension of licence which was renewed after the said offences had already taken place. If the alleged offences as set out in the statement (Annexure-A) were serious, there was no occasion for the competent authority to renew the licence from time to time thereafter. The very fact that the licence was renewed by the competent authority even after such offences under section 33(W) and 110 of Bombay Police Act, 1951, were committed by the petitioner, it would show that such offences were not found weighty of refusal for renewal of the licence to the petitioner. When the competent authority renewed the licence in favour of the petitioner after such offences were committed by the petitioner, the licence authority had no power, competence or jurisdiction to take such offences into consideration for cancellation or suspension of licence. On this ground alone the order passed by respondent No. 1 on 18-09-1998, and confirmed in appeal by respondent No. 2 cannot be sustained. In

this view of the matter, I do not intend to go into various questions raised by the petitioner in the writ petition challenging the impugned order."

(emphasis added)

Thus, it is clear that what has been held is that the licensing authority may refuse to renew the license if it is satisfied that the licensee is not a suitable person for continuing to hold the license. Once the licensing authority renews the license despite the omissions, offences and breaches committed by the licensee earlier thereto, it would mean that such licensee has been found to be a suitable person for renewal despite the said offences. Therefore, no action can be taken.

9. It is further significant to note that the license was suspended for a period of 60 days by the impugned order dated 09.10.2017. However, the Hon'ble Minister has reduced the said period of suspension from 60 days to 15 days. Thus, it is clear that the violations alleged are not of serious nature.

10. A perusal of the order passed by the Hon'ble Minister shows that various contentions raised in the reply to the Show Cause Notice are not considered.

11. Therefore, in the facts and circumstances of this case, the impugned order dated 09.10.2017 passed by the Assistant Commissioner (Zone 5) alias Licensing Authority, Food & Drugs Administration (State of Maharashtra), Mumbai - 51 and the impugned order dated 06.10.2021 passed by the Hon'ble Minister, Food & Drugs Administration passed in Appeal No. 162 of 2018 are required to be quashed & set aside and accordingly, same are quashed & set aside and the said Appeal filed before the Hon'ble Minister is allowed entirely. The impugned order dated 28.08.2023 passed by the Assistant Commissioner (Medicines) alias Licensing Authority (Zone 5), Food & Drugs Administration (State of Maharashtra), Mumbai - 51 is a consequential order of the order dated 06.10.2021 passed by the Hon'ble Minister, Food & Drugs Administration passed in Appeal No. 162 of 2018 and therefore, the same is also quashed & set aside.

12. Accordingly, the Writ Petition is allowed and disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)