

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12314 of 2024

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M/S Umakant Drug Agency through its proprietor Rinku Raman, aged about 47 years, Gender- Male, Son of Umakant Yadav, Resident of village- Gaushala, P.S. - Katihar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. The State Drug Controller-cum-Chief Licensing Authority, New Secretariat, Bihar, Patna.
3. The Secretary, Health Department, Government of Bihar, Patna.
4. The Assistant Drug Controller, Drug Control Administration, Kishanganj.
5. The Drug Inspector, Katihar 04 and Katihar 03.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Senior Advocate with
Mr. Vijay Anand, Advocate.
Mr. Kumar Rajdeep, Advocate.
Mr. Roop Kishan, Advocate.

For the Respondent/s : Mr. Standing Counsel-1 7.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 22-11-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed in the nature of certiorari for challenging the orders:-

- (i) dated 24.04.2024 passed by Appellate Tribunal-cum-Secretary, Health Department, Bihar, Patna whereby and whereunder the appeal file by the petitioner U/s 66(i) of Drug and Cosmetic Rules 1945 against the order dated 27.09.2023 passed by Assistant Drug Controller, Directorates of Drug Control, Katihar was dismissed and affirming the order of Assistant Drug Controller, Katihar.
- (ii) Order dated 27.09.2023 passed



by Assistant Drug Controller, Directorates of Drug Control, Katihar fully contained in Letter No. 301 whereby and whereunder the license No. BR-KAT-152330 under Form 20B and Lincense No. BR-KAT-152331 under 21B has been cancelled on grounds which are bad in the eye of law.

(iii) For issuance of appropriate writ/writs, order/orders, direction/directions in the nature of mandamus commanding the Respondents to restore the Drug License of the petitioner.”

3. Learned counsel appearing on behalf of the petitioner has stated that the authority has inspected the premises of the petitioner on 05.09.2023 and subsequently, issued a show-cause notice dated 11.09.2023. In the said show-cause notice the only irregularity that was mentioned by the authority was that the petitioner did not produce the sales record of the WISCOF Cough Syrup 100 ml. before the Drug Inspector. That the petitioner has submitted his explanation to the said show-cause notice on 18.09.2023 explaining in detail that the computer of the petitioner got corrupted, therefore, the data pertaining to the sales could not be recovered and that they are not in a position to submit the same. The authority without considering the explanation submitted by the petitioner vide order dated 27.09.2023 has cancelled the license of the petitioner. Though the petitioner has preferred an appeal before the statutory authority, the statutory authority did not appreciate the case in a proper perspective and dismissed the appeal. That



aggrieved by the order of the appellate authority, the petitioner has filed the present writ petition. Learned counsel has stated that the license of the petitioner cannot be cancelled on a technical ground that the petitioner did not produce the sales record. Learned counsel has stated that there is absolutely no allegation that the petitioner is indulging in black-marketing, violating the provisions of the Act or selling the drugs to unauthorized persons. Learned counsel has stated that the petitioner is a wholesale dealer who sells the drugs to the retail pharmacies only. The authority instead of taking a lenient view of the matter have cancelled the license of the petitioner. Learned counsel has stated that because of the harsh action taken by the respondents, the other drugs for which the petitioner was having a valid licence and documents have expired and the petitioner is put to huge monetary loss. Learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of *Harbanslal Sahnia & Anr Vs. Indian Oil Corpn, Ltd. & Ors. reported in (2003) 2 SCC 107* and the Judgment of this Hon'ble Court in the case of *Universal Drug House Pvt. Ltd. Vs. State of Bihar and Ors. reported in (2003) 3 PLJR 771* in support of his case.

4. Per contra, the learned counsel appearing on behalf



of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner could not produce the sales register at the time of inspection, therefore, the necessary action under the provisions of the Act was taken against the petitioner. Learned counsel has stated that the drug which was being sold by the petitioner contains codeine which is a restricted drug and unless and until any person produces any prescription, the same cannot be sold and the petitioner failed to produce the sales record. That the petitioner is obligated under law to produce the monthly statements of the sales but the petitioner has failed to do so. Further, it is stated that the present CWJC is not maintainable as the petitioner has an alternative and efficacious remedy of appeal. Learned counsel has therefore prayed this Court to dismiss the present writ petition.

5. Admittedly, as seen from the record, the only allegation against the petitioner is that he could not produce the sales register at the time of inspection before the Drug Inspector. It is not the case of the respondent-authority that the petitioner is either indulging in black-marketing or selling the same without invoice or that he is engaging in illegal sale of the above-mentioned drugs.



6. The Hon'ble Supreme Court in the case of ***Harbanslal Sahnia & Anr Vs. Indian Oil Corpn. Ltd. & Ors.*** reported in (2003) 2 SCC 107 has held as under:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. V. Registrar of Trade Marks).”

7. Further, this Hon'ble Court in the case of ***Universal Drug House Pvt. Ltd. Vs. State of Bihar and Ors.*** reported in (2003) 3 PLJR 771 has held as under:-

“8. in Wyeth Lederle Ltd. Vs. State of Bihar, 2002 (3) Pat LJR 580, this Court had directly intervened on a writ petition and had also cautioned the licensing authority against cancelling the licence as a whole for a minor violation in regard to one of the items of the licence.

9. it may be noted that in course of inspection the drug authorities noticed two irregularities, one relating to the preparation called Ocimal Linctus with Codeine and the other with the pricing of parafen tablets. The irregularities in regard to these two specified items are made the basis for cancellation of the



entire licence. It is true that a single violation of the licence or a contravention of the licence with regard to any one the items covered by it may be so grave and serious as to justify the cancellation of the entire licence with regard to a number of other items as well. But all violations may not necessarily lead to cancellation of the licence as a whole. A technical or minor violation in regard to one or some of the items covered by the licence may not, in all cases, justify cancellation of the whole licence covering many other items in regard to which there is no violation of any kind. It cannot be lost sight of that the cancellation of the licence in its entirety would amount to, as in this case, a forcible shutting down of a long standing business of this licensee. Whether the licence would be liable to cancellation partly or wholly would depend upon the facts and circumstances of each case. But the point to be emphasized is that the power to cancel licence must be exercised with proper discretion and not mechanically or arbitrarily.”

8. Having regard to the fact that there are no allegations of any violations of the Act except for the fact that the petitioner has not produced the sales register before the Drug Inspector, the punishment meted out to the petitioner appears to be very harsh. The explanation submitted by the petitioner ought to have been taken into consideration but the same has not been considered at all. Further, it is not the case of the petitioner that some other drugs in which the petitioner is dealing with are also being sold illegally or that the petitioner is engaging in any other illegal activities. When there are no other serious allegations, the cancellation of the license of the petitioner for



an offense which is trivial in nature appears to be too harsh.

9. Having regard to the abovementioned facts and circumstances, this Court deems it fit and proper to set aside the impugned order dated 24.04.2024 passed by the Appellate Tribunal-cum-Secretary, Health Department, Bihar, Patna and the order dated 27.09.2023 passed by the Assistant Drug Controller, Directorates of Drug Control, Katihar and restore the license of the petitioner. It is made clear that the petitioner shall keep the records in a safe and secure manner and comply with the provisions of the Act strictly in letter and spirit.

10. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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