

Ashvini Narwade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5639 OF 2024

Mr. Nitin Mahadev Gavsane

... Petitioner

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. Sanjaya Thokade for the Petitioner.

Ms. Shruti D. Vyas Addl. G. P. a/w. Ms. P. N. Diwan, AGP for the state.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 16th APRIL 2024

P.C.

1. This Petition under Article 226 of the Constitution of India has been filed praying for the following reliefs:-

(a) Rule be issued and record and proceeding may be called for;

(b) This Hon'ble Court may be pleased to grant stay to the execution, operation and implementation of the order, dated 15.02.2024, passed by the Respondent No.2, suspending the licence of the Petitioner w.e.f. 18.04.2024 to 16.06.2024, till the statutory appeal filed by the Petitioner before the Hon'ble Minister i.e. Respondent No.1, is heard and decided on merits;

(c) Ad-interim relief in terms of prayer clause (b) about may be granted;

(d) This Writ Petition may be allowed;

(e) Such other just, equitable and proper orders may be passed in favour of the Petitioner;

2. The case of the Petitioner is that the impugned Show Cause Notice was issued to the Petitioner on 10th January 2024 in relation to the license granted

to the Medical & General Shop. The Show cause notice has alleged some irregularities which, according to the Petitioner, are minor irregularities.

3. On 16th January 2024, Petitioner furnished explanation to the Show Cause Notice. On 15th February 2024, Respondent No. 2 passed order suspending the Petitioner's license for 60 days w.e.f. 18th April 2024 to 16th June 2024.

4. On 11th March 2024, the Petitioners, being aggrieved by the said Order dated 15th February 2024, suspending the Petitioner's license for the aforesaid period, filed an Appeal under Rule 66(2) of the Drugs & Cosmetics Rules, along with Application for interim stay. Such Appeal and Application for interim stay are required to be heard by the State Government.

5. It is the Petitioner's case that the Appeal is pending and the period of suspension would take effect from 18th April 2024. Thus, the contention is that if the Stay Application or Appeal is not heard, the Petitioner may suffer severe prejudice and would require to suffer the suspension for want of action from the Appellate Authority to hear the Petitioner's Stay Application or the Appeal.

6. It is the case of the Petitioner that on 16th March 2024, due to declaration of Lok Sabha Elections and coming into force of the Code of Conduct, it is not likely that the Petitioner's application for interim stay or appeal would be taken up for hearing till the election is over as informed to the

Petitioner by the office of Respondent No.1, and the same may rendered infructuous and Petitioner would have to suffer the impugned order dated 15th February 2024.

7. In these circumstances, present Petition has been filed.

8. Mr.Thokade, learned Counsel for the Petitioner, has drawn our attention to a judgment dated 10th January 2024 of this Court in Writ Petition No.305 of 2024 (**M/s. Apna Chemist Vs. Assistant Commissioner (Zone-3) & Anr.**) along with other connected matters, in which, in similar circumstances, this Court has allowed the Petition, considering the fact that, if any suspension of the orders as impugned are required to be suffered by the Petitioners for want of the Appeal and the stay application being not heard, the same would certainly cause prejudice to such Petitioners. Relevant observations in that regard are set out in paragraph 6 of the said order which read thus:-

6. Having heard learned Counsel for the parties and having perused the record, in the facts and circumstances of the case, we find much substance in the contentions as urged on behalf of the petitioners. The petitioners in the present case are aggrieved by the orders passed by respondent no. 1 suspending their licence as noted above. They have taken recourse to a statutory remedy as available to them under the rules by filing their respective appeals with the Appellate Authority/State Government. Such appeals are in fact filed well in advance with an intention that the appeals are decided prior to the period of suspension of their licence as ordered by respondent no. 1. The intention of the petitioners being that in the facts and circumstances of their respective case, they ought not to suffer an unwarranted suspension. Thus, the concern of the petitioners is that the remedy of an appeal as provided under the rules should not be rendered otiose, so as to bring about a situation, that after the suspension period is over, the proceedings are thereafter decided, which would cause a serious prejudice to the petitioners. We are quite in agreement with the petitioners. In such

circumstances, there cannot be a scope for a theory of “operation being successful however the patient dead”. The petitioners would certainly have a legal right to know, the status of their challenge insofar as the interim reliefs or the final reliefs they seek in their appeals, before they are made to suffer the suspension order. We would also observe that in the circumstances as in the present proceedings, the non passing of an appropriate order (interim or final), would also have a direct bearing on the rights of the petitioner to carry on trade, occupation/business. This in as much as, such inaction on the part of the appellate authority is likely to affect the rights guaranteed to such persons under Article 19(1)(g) of the Constitution read with Articles 14, 21 and 300A of the Constitution. The appellate authority is thus expected not to overlook such significant obligation in relation to the powers the appellate authority wields, in adjudication of the statutory appeals. Once the remedy is provided by law, it is required to be an “effective remedy” in letter and spirit. The appellate authority hearing the statutory appeals would be required to be alive to the consequences, an order subject matter of the appeal would bring about qua the appellant before it.

9. Learned Additional Government Pleader would also not dispute that the proceedings would stand covered by our decision in **M/s. Apna Chemist** (supra).

10. In the aforesaid circumstances, we find ourselves in agreement with Mr. Thokade that we would be required to pass similar orders considering the facts of the present case are similar to the facts in **M/s. Apna Chemist** (supra). We accordingly dispose of this Petition by the following orders:-

ORDER

(i) The appellate authority is directed to hear the Petitioner’s pending appeal and/or stay application as expeditiously as possible, and, in any event, within a period of eight weeks from the date a copy of this order is presented before the appellate authority.

(ii) Needless to observe that, if the appeal is fixed for hearing in the immediate future, the same be taken up and decided as per the schedule for hearing so fixed.

(iii) Till the appeals/stay applications are decided, the orders suspending petitioner's licences, subject matter of challenge in the appeal, shall remain stayed.

(iv) Needless to observe that, in the event, the petitioner fails in the appeal, certainly it would be within the powers and authority of the appellate authority to modify the period of suspension and impose a future period of suspension on the petitioner.

(v) All contentions of the parties on the pending appeal are expressly kept open.

11. Disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)