

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 631 OF 2024**

M/s Balaji Medical & General Store

... Petitioner

Versus

Assistant Commissioner Food and Drugs
Administration & Anr.

... Respondents

Mr. Atal Bihari Dubey a/w Mr. Ved Tiwari i/b Mr. Arvind Tiwari, for the
Petitioner.

Ms. P. N. Diwan, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 18 January, 2024

P.C.

1. We have heard Mr. Dubey, learned counsel for the petitioner and Ms. Diwan, AGP for respondent/State.
2. This petition is filed praying for the relief that the order dated 20 October 2023 by which the license of the petitioner under the Drugs and Cosmetics Act, 1940 to conduct a medical store, has been ordered to be suspended for a period of 19 days from 19 January 2024 to 6 June 2024, be set aside.
3. The case of the petitioner is that the petitioner has already filed an appeal challenging the said order of suspending the petitioner's license on 19 December 2023. It is contended that neither the appeal nor the stay application as filed in the appeal, has been decided by the learned Appellate

Authority. In the event, the suspension order takes effect and petitioner suffers suspension, the appellate proceedings itself would become infructuous and it is in these circumstances, the reliefs as prayed for in this petition needs to be granted. The prayers as made in the petition reads thus:

“a. That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus directing the Respondent No.2 to hear and decide the Appeal dated 11.12.2023 addressed on behalf of the Petitioner expeditiously and in a time bound manner.

b. That pending the hearing and final disposal of the present Writ Petition and the Appeal filed by the Petitioner, this Hon’ble Court be pleased to stay the operation, implementation and execution of the impugned order dated 20.10.2023 passed by the Respondent No.1 and for a further period of 2 (two) weeks after disposal of appeal filed by the Petitioner.

c. For interim and ad-interim reliefs in terms of prayer (a) and (b) above.

d. For such and further relief, as per the nature and circumstances of the case, as this Hon’ble Court may deem fit and proper any please be granted.”

4. Learned counsel for the petitioner, in support of the reliefs as prayed for, has placed reliance on a decision of this Court in **M/s Apna Chemist Vs.**

Assistant Commissioner (Zone-3) & Anr.¹ This Court, in the circumstances which are similar as in the present proceedings, had disposed of the petition in terms of the following operative order:

- i. The appellate authority is directed to hear the petitioners pending appeals 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 appeals are fixed for hearing, in the immediate further, 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 license, subject matter of challenge in the appeals, shall remain stayed.
- iv. Needless to observe that in the event the petitioners fail in their appeals, 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 petitioners.
- v. All contentions of the parties on the pending appeals are expressly kept open.

Disposed of in the above terms. No costs."

5. The aforesaid order was passed by this Court on the batch of petitions, considering the fact that in the event, the petitioner therein suffer the order then it would be a situation of a *fait accompli*. It was hence observed that if the appeal of the petitioner does not succeed then the suspension can be imposed for a further period.

6. In our opinion, the facts of the present case are not different, the petition is accordingly disposed of in terms of the following order:

1 Writ Petition No.305 of 2024. Order t. 10.1.2024

- “i. The appellate authority is directed to hear the petitioner pending appeals 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 appeal/stay application as filed is decided, the order suspending petitioner’s license, subject matter of challenge in the appeal, shall remain stayed.
 - iv. Needless to observe that in the event the petitioner fails in its 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 appeals are expressly kept open.
- 7. Disposed of in the above terms. No costs.
 - 8. Parties to act on authenticated copy of this Order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)