



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2688 OF 2024

Janki Medical and General Stores, through its ... Petitioner
proprietor Shahaji Sarangdhar Chavan

Versus

Assistant Commissioner, Food and Drugs ... Respondents
Administration & Anr.

Mr. Rushikesh S. Kekane for the petitioner.

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

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 28 February, 2024

P.C.

1. By an order dated 29 December, 2023, respondent no. 1 had suspended the licence of the petitioner to conduct a medical stores. The petitioner has already filed an appeal assailing the said order, which is stated to have been filed on 30 January, 2024. The appeal is yet to be heard as also the stay application as filed in the appeal has not been considered so far.

2. It is contended on behalf of the petitioner that the suspension order is to take effect from 1 March, 2024 and in these circumstances, if the petitioner's stay application and the appeal are not heard and an appropriate order is not passed, serious prejudice would be caused to the petitioner inasmuch as the petitioner would be required to close down the business. In support of such contention, the learned counsel for the petitioner has placed reliance on the

decision of this Court in Writ Petition No. 305 of 2024 in *M/s. Apna Chemist vs. Assistant Commissioner (Zone-3) & Anr.* along with other petitions dated 10 January, 2024 whereby for the reasons as set out in paragraph 8 of the said order, the Court has granted protection to the petitioners therein till the appellate authority takes up the appeals and decides the same and had accordingly disposed of the petitions in terms of the order in paragraph 8. The relevant observations of the Court are required to be noted:

“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.

7. In the aforesaid circumstances, we are of the clear opinion that the petitioners ought to be granted a protection till the appellate authority takes up the appeal and decides the same.

8. We, accordingly, dispose of the petitions by the following order:

ORDER

(i) The appellate authority is directed to hear the petitioners pending appeals and/or stay applications 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 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 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."

9. Disposed of in the above terms. No costs."

3. In our opinion, the present case also being similar to the case before the Court in *M/s. Apna Chemist*, similar orders are required to be passed. We, accordingly, dispose of this petition in terms of the following order:

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 appeal/stay application is 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 fail 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.

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

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)