



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12884 OF 2024

M.B. Sugars and Pharmaceuticals Pvt. Ltd. ... Petitioner

Versus

Joint Commissioner, Food and Drug Administration ... Respondents
Office & Ors.

Mr. Pritesh Burad a/w. Mrs. Madhuri Gamre i/b. Pritesh Burad Associates
for the petitioner.

Mr. Prashant More, AGP for the State/respondent nos. 1 and 2.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
Date : 10 September, 2024

PC:

1. We have heard learned counsel for the parties.
2. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive relief:

“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 respondent no. 2 to hear and decide the said Appeal dated 14.08.2024 addressed on behalf of the petitioner expeditiously and in a time bound manner.”

3. The case of the petitioner is that against the order dated 14 June, 2024 passed by respondent no. 1-Joint Commissioner, Food and Drug Administration suspending the petitioner’s licence as granted under the

Drugs and Cosmetics Act, 1940 from 11 September, 2024 to 16 September, 2024 (both days inclusive), the petitioner has already filed a statutory appeal before the State Government alongwith a prayer for stay on 14 August, 2024. However, neither the stay application nor the appeal is being taken up for hearing, leading to a consequence that the petitioner would be required to suffer suspension when it has already availed of the appellate remedy. He, therefore, submits that it is necessary that the Appellate Authority be directed to take up the proceedings and pass an order, so that the petitioner does not suffer suspension if the petitioner is correct on its appeal. In support of such contention, reliance is placed on the decision of Division Bench of this Court in **Apna Chemist vs. Assistant Commissioner (Zone-3) and Anr. and other companion petitions¹**, to which one of us (Justice G.S. Kulkarni) was a member. In such case in similar circumstances, the Court had considered the grievance of the petitioner and in terms of the observations as made in paragraph 6, the proceedings were disposed of directing the Appellate authority to hear the petitioners pending appeal and/or stay applications as expeditiously as possible and till the appeals/stay applications are decided. It was directed that till such decision on the stay application and/or the appeal, the orders suspending petitioner's licences,

¹ 2024 SCC OnLine Bom 84

subject matter of challenge in the appeals, shall remain stayed. It was also observed that if 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.

4. Similar view has been taken by the Division Bench of this Court in **Balaji Medical & General Store vs. Assistant Commissioner, Food and Drugs Administration & Anr.**² to which one of us (Justice G.S. Kulkarni) was a member.

5. Having heard the learned counsel for the parties, we are of the opinion that it is in the interest of justice that the orders similar to one passed by this Court in *Apna Chemist* (supra) and *Balaji Medical & General Store* (supra) would be required to be passed in the present proceeding, as the petitioner cannot suffer the order and meet a situation of *fait accompli*, so as to render the adjudication of appeal itself academic.

6. In the aforesaid circumstances, we dispose of this petition by the following order:

² Writ Petition No. 631 of 2024 decided on 18 January, 2024

ORDER

(i) The appellate authority is directed to hear the petitioner 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 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.

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

8. Parties to act on the authenticated copy of this order.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)