



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-14368-2020 (O&M)
Date of decision: 30.09.2024

M/s 24 Hours Pharmacy, Inside PIMS Medical College & Hospital, Garha
Road, Jalandhar City
...Petitioner

VERSUS

State of Punjab and others
...Respondents

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CWP-12318-2017 (O&M)
Date of decision: 30.09.2024

M/s 24 Hours Pharmacy, Inside PIMS Medical College & Hospital, Garha
Road, Jalandhar City
...Petitioner

VERSUS

State of Punjab and others
...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Deepak Sabherwal, Advocate for the petitioner.

Mr. Aditya Sharda, DAG Punjab with
Mr. Rajesh Suri, Zonal Licensing Authority (Drugs) Jalandhar;
Mr. Perminder Singh, DCO Jal-3.

Mr. Aditya Dewan, Advocate and
Mr. Arora Vishwas Kumar, Advocate for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

1. Both these writ petitions have been instituted by M/s 24 Hours
Pharmacy, aggrieved *inter alia* against the action taken by respondent No.2-
Zonal Licensing Authority (Drugs), Jalandhar Zone, Jalandhar directing the
petitioner to stop the operation of whole-sale drug shop in CWP-12318-2017



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and against non-acceptance of the manual application for renewal of the drug license of the petitioner (in CWP-14368-2020).

2. A brief reference to the contentions and facts of the petitioner are however being made from **CWP-14368-2020** titled as ‘**M/s 24 Hours Pharmacy, Inside PIMS Medical College & Hospital, Garha Road, Jalandhar City Vs. State of Punjab and others**’.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner-Firm is a pharmacy shop and is in the business of retail and wholesale of drugs after obtaining licenses under the Drugs and Cosmetics Act, 1940. He contends that the PIMS Medical and Education Charitable Society got a lease for 99 years to run the hospital at Jalandhar on public-private partnership format with the sub-leasing rights. The petitioner approached the PIMS Hospital for running pharmacy services in its premises and the hospital accepted its offer and permission was granted to the petitioner to run pharmacy services in the hospital premises w.e.f. 01.03.2010, as per the mutually agreed terms and conditions. Possession of 3097 square feet area in the outpatient area and 298 square feet area (later on reduced to 202 square feet area w.e.f. 10.08.2015) in the emergency department of the hospital was granted to the petitioner to run the pharmacy shops. The petitioner-Firm claims to have a valid drug license issued by respondent No.2, the details whereof are as under:-

“a. Retail sales drugs license no. 27092-NB & 27092-B issued on 5.4.2010 renewed upto 04.04.2020.

b. Retail sale Drugs License JD/802/NB and JD/802/B issued on 15.09.2015 and valid upto 14/09/2020.



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- c. Wholesale drugs licence no. 21574-OW & 21364-W issued on 05.04.2010 valid upto 04.04.2020.**
- d. Schedule X License JD-03-X issued on 19.02.2015 valid upto 18.02.2020.”**

4. The said drugs licenses are required to be renewed 06 months prior to the date of its expiry, in terms of Rule 63 of the Drugs & Cosmetics Rules, 1945. He contends that the drug licenses could however not be renewed in terms of said Rule but an intimation was sent by the petitioner on 06.04.2020 that it wanted to submit documents for renewal of drug license but due to lockdown being imposed and spread of Covid-19, all the offices were shut down and the documents could not be submitted due to the lockdown. It was averred that despite the petitioner repeatedly visiting the respondents, the application was not being accepted.

5. He further contends that the PIMS Hospital tried to forcefully evict and dispossess the petitioner from the premises against which Civil Suit No.1527 of 2017 was filed. The parties were directed to maintain the status quo. It is alleged that on account of connivance with the management of the hospital, respondent No.2 made an attempt to cancel the drug licence of the petitioner-Firm in one way or the other. The said Civil Suit was disposed of on 25.05.2023, after recording a statement of the counsel for the defendants (PIMS Medical and Education Charitable Society) not to interfere in any manner into the peaceful possession and from disconnecting the amenities of water, electricity etc., from blocking the ingress and egress of the plaintiffs (petitioner herein) as well as their employees and from forcibly dispossessing the plaintiffs from the premises i.e. portion



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comprising 3097 square feet area approx. as outpatient area and 202 square feet as emergency area situated in the premises of Punjab Institute of Medical Sciences and Hospital situated at Garha Road, Jalandhar, except in due course of law. However prior to the aforesaid order, respondent No.2 tried to cancel the drug license of the petitioner vide orders dated 29.03.2017 and 31.03.2017 alleging violation of Rule 64 of the Drugs and Cosmetics Rules, 1945 and directing the petitioner to stop the wholesale and retail business operation of the firm at the premises with immediate effect. The same compelled the petitioner to approach this Court vide CWP-7636-2017 against the order dated 31.03.2017, which was disposed by this Court vide order dated 03.05.2017 after respondent No.2 appeared and admitted his mistake and withdrew the said order. Similarly, CWP-12318-2017 was also filed by the petitioner against the order dated 29.03.2017, wherein the operation of the impugned order was stayed by this Court vide order dated 31.05.2017. A separate COCP-1737-2017 was also filed against respondent No.2 for non-compliance of the interim order dated 31.05.2017 passed by this Court in CWP-12318 of 2017. He further contends that thereafter respondent No.2, in connivance with the management of the hospital, issued two notices dated 06.07.2017 and 07.07.2017 for cancellation of the drug licenses on the trivial ground that the change in constitution of the partners of the firm was not communicated to the authorities. Another order dated 10.11.2017 was passed by respondent No.1 whereby all 03 licenses held by the petitioners were cancelled and the petitioner-Firm was directed to stop the sale/purchase and distribution of drugs with immediate effect from the



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date of receiving of order. The said order was also a subject matter of challenge in CWP-26922-2017 and the operation of the order dated 10.11.2017 was stayed by this Court vide order dated 28.11.2017. The said writ petition has been disposed of today vide a separate order as having been rendered infructuous as the period of the said license has already ended.

6. It is contended that thereafter, the petitioner-Firm is currently operating from the said premises on the strength of the interim order passed by this Court and that it is in a Catch-22 situation as it wants to upload the application form online for seeking renewal of the license but the same is not being accepted since the partnership deed shows the existence of four partners whereas in the original license that was granted to the petitioner, there were a total of two partners. There is no provision in the online form for change of the composition of the partnership firm. Resultantly, the petitioner approached this Court vide the instant petition for seeking directions to the respondents to accept the application of the petitioner by a manual mode since the same had been refused by the respondents and they insisted on submission of the application online only.

7. Learned State counsel however contends that as per the terms & conditions of the drug license issued under the Drugs and Cosmetics Rules, 1945, a licensee is under obligation to inform the Licensing Authority in writing, an event of any change in the constitution of the firm operating under the license. In the event of any change, the subsisting (current license) is deemed to be valid for a maximum period of 03 months from the date on which such a change takes place, unless in the meantime, a fresh license has



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been taken from the Licensing Authority in the name of the firm with the changed constitution. The Clause according to which the drug licence is granted under the Drugs and Cosmetics Act, 1940 and Rules framed thereunder is extracted as below:-

“5. The license shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the license. Where any change in the constitution of the firm takes place, the current license shall be deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh license has been taken from the Licensing Authority in the name of the firm with the changed constitution.”

8. He further contends that as a matter of fact, when the petitioner had originally applied for the grant of license to the Zonal Licensing Authority (Drugs), Jalandhar Zone, he had submitted a partnership deed reflecting two partners. Significantly, when the Civil Suit No.1527 of 2017 was filed, it transpired that there were originally 04 partners in the partnership firm which was duly registered with the Registrar Firms and Societies, Punjab. Notwithstanding existence of four partners in the registered partnership firm, the documents appended for securing license from the Zonal Licensing Authority (Drugs), Jalandhar Zone reflected existence of only two partners. Hence, the license itself was obtained by



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concealing the actual status of the partnership firm. He contends that as per condition No. 5 any change of partnership firm has to be reported within a period of 03 months, failing which the license would have been deemed to be cancelled. No such application was however submitted by the petitioner for seeking change in the constitution of partnership firm even though the aforesaid fact was known to the petitioner in the year 2017 when there was no Covid-19 scenario. It continued to sit over the matter till the year 2020 when for the first time, a representation was submitted by them but the application form could not be accepted. It is contended that as the license itself stands cancelled not only on account of the breach of condition No.5 of the license itself but also on account of efflux of time, the application for renewal, under a changed composition of partnership cannot be accepted. The petitioner would be required to submit a fresh application for grant of license reflecting the actual status and composition of the partnership firm.

9. Learned State counsel, on instructions from Mr. Rajesh Suri, Zonal Licensing Authority (Drugs) Jalandhar Zone, informs that in the event of the petitioner submitting an application for grant of a fresh drug license and fulfilling all the necessary terms and conditions stipulated under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder, an appropriate decision in accordance with law will be taken thereupon.

10. Learned State counsel, on instructions from Mr. Rajesh Suri, Zonal Licensing Authority (Drugs) Jalandhar, further informs that in the event of the petitioner submitting an application for a fresh license, a new user ID and Password can be generated by the petitioner for submission of



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the application along with all the requisite documents.

11. Learned counsel appearing on behalf of respondent No.3 contends that the respondent-authorities should take an appropriate action against the petitioner for not having disclosed the complete and true facts to them and that it was on account of the wrong documents that were submitted that the petitioner secured a license in his favour and continued to operate on the said drug license.

12. Learned counsel for the petitioner, however, contends that in view of the statement made by the respondent-State, on instructions from the Zonal Licensing Authority (Drugs) Jalandhar Zone, he has instructions from his client to submit a fresh application in accordance with law for seeking a fresh drug license. He thus does not wish to press the petition at this stage. He, however, prays that he may be granted an interim protection for a period as may be specified by this Court till such time that a decision is taken by the respondent-authorities on his application for release of a fresh drug license.

13. Learned State counsel has no objection to the same.

14. Accordingly, both the petitions are **disposed of** as not pressed at this stage with liberty to the petitioner to submit an application to the respondents within a period of one week from today, notwithstanding the receipt of a certified copy of this order. A decision shall thereafter be taken on submission of such an application by the competent authority/Zonal Licensing Authority (Drugs) Jalandhar Zone, as the case may be, within a period of 30 days from the receipt of such an application complete with all



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documents and fees. The interim protection granted to the petitioner to continue its operation shall inure in favour of the petitioner till a decision is taken by the competent authority, on submission of application for fresh license by the petitioner.

15. In the event of an order being passed against the petitioner, the protection shall continue to extend for a further period of one week of the passing of such an order so as to enable the petitioner to take recourse to an appropriate remedy(ies) in accordance with law.

16. Needless to mention that nothing observed herein shall have any bearing on the outcome of the Civil Suit that is already pending between the parties before the Civil Court and the said matter be adjudicated by the competent Court on the strength of the evidence adduced before it.

17. All pending civil misc. application(s), if any, stand disposed of.

30.09.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(VINOD S. BHARDWAJ)
JUDGE