

2024.PHHC.137654



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-19347-2024

Date of Decision: 21.10.2024

VIJAY PAL

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Lokesh Sharma, Advocate for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner seeks directions to respondent No.1 to 3 to constitute a high level committee to curtail mushrooming of retail shops at village Kapriwas, Tehsil and District Rewari, in violation of the Drugs and Cosmetics Rules 1945 framed under the Drugs and Cosmetics Act, 1940.

Learned counsel for the petitioner contends that the petitioner is running a retail chemist shop since 1997 at village Kapriwas, District Rewari under the name and style of “M/s New Sahara Medicos” and the licence of the petitioner is valid upto 10.03.2027. There are total five chemists shops including that of the petitioner, which have been granted licences under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder over different periods of time. He contends that the licences for retail chemist shops have been granted by respondents No.2 to 4 in violation of the guidelines issued by respondents. It is



vehemently argued that total population of the village is around 4000 and that not more than one retail shop is required for catering to the requirements of medicine in the village. He places reliance on the guidelines (Annexure P-6) issued by the State Drugs Controller dated 28.12.2015 in relation to grant of Retail and Wholesale Drug Licences issued in compliance to the order passed by this Court in CWP-20359 of 2013.

I have heard learned counsel for the petitioner at length and have gone through the documents available on record.

When the matter came up for hearing on 02.09.2024, the following questions were raised to the petitioner: -

“Learned counsel appearing on behalf of the petitioner prays for some time to assist this Court with respect to the sustainability of the relief in light of Article 19 and 21 of the Constitution of India, more so when the statute does not restrict the total number of licenses and as to whether any office circular can be enforced to restrain the right of an individual to carry on trade in profession.

On his request, adjourned to 30.09.2024.”

On resumed hearing, he contends that he is placing reliance on the guidelines that have been issued by the State Drugs Controller, Food and Drugs Administration, Haryana and that he is not in a situation to refer to any statutory provision, either in the Act or the Rules framed thereunder, as per which the number of retail licences can be curtailed. He is also not in a position to controvert that above mentioned guidelines dated 28.12.2015, issued by the respondents, are not statutory and they are at best certain aspects that may be required to be taken into consideration.

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I am of the view that in the event of the said guidelines not being statutory and not being strictly adhered to, the issuance of a licence cannot be held to be illegal since the same is not in violation of the statutory provisions of Drugs and Cosmetics Act, 1940 and the Rules framed thereunder. The same may at best entail certain departmental consequences for the persons/officials who had issued the licences but do not call for directions from this Court to cancel the licences that have already been issued in favour of the applicants, who are otherwise eligible and fulfill the requisite qualifications prescribed under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder.

The present writ petition is accordingly dismissed at this stage.

OCTOBER 21, 2024.*rajender***(VINOD S. BHARDWAJ)
JUDGE***Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*