

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7498-2018
Date of decision:-13.11.2024

M/s Nav Jiwan Pharma and another

...Petitioners

Versus

State of Punjab and others

...Respondents

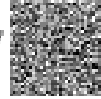
CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Sandeep K. Sharma, Advocate
for petitioners.

Mr.Brijesh, AAG, Punjab
for the respondents.

SUVIR SEHGAL, J.(ORAL)

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India, inter alia, for issuance of a writ in the nature of certiorari for quashing orders dated 11.05.2017 and 27.12.2017, Annexures P5 and P7, respectively, whereby both the wholesale drug licences issued to the petitioners have been cancelled.
2. Brief facts leading to the filing of the present petition are that the petitioners possessed two licences and was running a wholesale



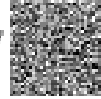
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drug store for the last more than fifteen years. The premises were inspected on 24.03.2017 and on the basis of the inspection report, Annexure P1, a show cause notice dated 31.03.2017, Annexure P3, was issued to the petitioners for contravention of the provisions of the Drugs and Cosmetics Rules, 1945 (for short “the Rules”). Petitioners filed response dated 05.04.2017, Annexure P4, claiming that there is no violation of the rules. Vide impugned order dated 11.05.2017, Annexure P5, the Joint Commissioner (Drugs) cancelled both the wholesale licences and appeal filed by the petitioners was rejected vide impugned order dated 27.12.2017, Annexure P7, passed by the Additional Secretary Health – cum – Appellate Authority, Punjab. Challenging both the orders, petitioner is before this Court.

3. By making a reference to Rule 66 of the Rules, the sole argument raised by counsel for the petitioners is that the authorities are empowered to cancel the licence of the petitioner in part and they have erred in cancelling the entire licence. He submits that the petitioners could not produce the bills of some drugs and the licence qua the said drugs should have been cancelled while retaining the licence for the other formulations. He has placed reliance upon judgments *M/s Garg Medical Hall Versus State of Punjab and others, 2011 (4) PLR 785* and *Universal Drug House Pvt. Ltd. Versus State of Bihar and others, 2004 AIR (Patna) 86*.

4. Writ petition has been contested by the respondents by filing a response, wherein it has been submitted that during inspection,



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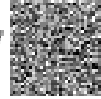
petitioner was found to be in possession of a huge quantity of intoxicating drugs and during the proceedings before the authorities, he could not produce the purchase bills for 38410 tablets of Tramadol. State counsel has placed reliance upon the judgment of Kerala High Court in **Kolambil Hamza Haji versus State of Kerala and others, Law Finder Doc ID # 1730657** to contend that the protection under Rule 66 is not available to the petitioners.

5. I have heard the counsel for the parties and considered their respective submissions.

6. In ***Kolambil Hamza Haji's*** case (supra), noticing Rule 66, *ibid*, the Kerala High Court has held that the protection under Rule 66, *ibid*, comes into play only when the allegation of any omission has been levelled against an agent or employee of the licence holder. The relevant observations of the Kerala High Court are reproduced hereunder:-

“9. Being contextually relevant, Rule 66 is extracted hereunder:-

*“66. **Cancellation and suspension of licenses.**-(1) The licensing authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons therefor, cancel a licence issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions*



of the license or with any provisions of the Act or rules thereunder:

Provided that, where such failure or contravention is the consequence of an act or omission on the part of an agent or employee, the license shall not be cancelled or suspended if the licensee proves to the satisfaction of the licensing authority-

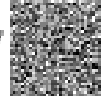
(a) that the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or a director of the company, or

(b) that he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission, the licensee had not or could not reasonably have had knowledge of that previous act or omission, or

(c) if the act or omission was a continuing act or omission, he had not or could not reasonably have had knowledge of that previous act or omission, or

(d) that he had used due diligence to ensure that the conditions of the license or the provisions of the Act or the rules thereunder were observed.

(2) A licensee whose licence has been suspended or



cancelled may, within three months of the date of order under subrule (1), prefer an appeal against that order to the State Government, which shall decide the same.”

A careful scrutiny of the Rule would show that the bar against cancellation or suspension of licence would come into play only when the contravention is the consequence of an act or omission on the part of an 'agent' or 'employee'. In such cases, the licensee could prove that 'he or his agent or employee' had not been guilty of any similar act or omission within 12 months of the date on which the instant act or omission was detected. The bar against cancellation of licence would have no application when the violation/contravention is committed by the licensee himself. The proviso is intended to safeguard the interest of a licensee, who is unaware of the contraventions committed by his agents or employees and not when the licensee himself is the violator. Further, even if the contravention is due to the act of an agent or employee, the bar would not apply if such violation was within 12 months of the present inspection and detection. This would imply that the bar against cancellation would come to the benefit of a licensee, who does not contravene the conditions and is also alert enough to prevent any such action by his employee or agent. As rightly contended by the learned Government Pleader, the provisions of the Drugs and Cosmetics Act should be given a purposive interpretation. The scope of the proviso to Rule 66



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cannot therefore be widened and the safeguard extended to a licensee who is personally responsible for the contravention.”

7. When examined in the light of the facts of the present case, it is apparent that the petitioner was the licence holder and he is himself responsible for storing such a huge quantity of drugs for which he did not possess any purchase bills. There is no allegation that the drugs were stored by his employee or agent. The judgments relied upon by counsel for the petitioners in *M/s Garg Medical Hall’s case* and *Universal Drug’s* case (supra) are not applicable to the facts of the present case as in both the judgments the Court had noticed the extenuating circumstances before granting relief to the petitioner. This Court does not find any infirmity in the orders passed by the authorities.

8. Petition is bereft of merit and is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

13.11.2024
Brij

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