

**CWP-32969-2019****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(101)****CWP-32969-2019****DATE OF DECISION:- 28.08.2024****BHAGWATI MEDICOS****...PETITIONER****Versus****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Rakesh Sobti, Advocate, for the petitioner.

Ms. Amrita Garg, Assistant Advocate General, Punjab.

SUVIR SEHGAL, J. (Oral)

1. Instant writ petition has been filed under Article 226/227 of the Constitution of India *inter alia* for issuance of a writ in the nature of certiorari for quashing orders dated 17.04.2019 and 27.08.2019, Annexures P-6 and P-9, respectively, whereby petitioner's application for renewal of retail sale drugs license has been rejected by the respondent authorities.

2. Factual matrix leading to the filing of the petition is that the petitioner was holding license for retail sale of drugs granted under the Drugs and Cosmetics Act, 1940 (for short "the Act") on 17.10.2003, and it was being renewed from time to time. The petitioner was a partnership firm comprising three partners, namely, Smt. Bimla, Shri Munish Arora and Shri Aashish Arora, who unfortunately expired in an accident on 03.05.2017. The partnership firm was reconstituted, and a fresh Partnership Deed dated 10.03.2019, Annexure P-4, was entered into by inducting Smt. Veena Devi, wife of the deceased, as a partner. An application dated 11.04.2019, Annexure P-5, was submitted to the

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respondents for grant of the license on account of change in the constitution of the firm, which was rejected vide order dated 17.04.2019, Annexure P-6, and appeal has been rejected on 27.08.2019, Annexure P-9. Assailing both the orders, Annexures P-6 and P-9, petitioner is before this Court.

3. Upon notice, writ petition has been contested by the respondents by filing separate responses taking a stand that with the death of a partner, the partnership firm stood automatically dissolved, and a fresh firm was constituted, but this intimation was submitted with the respondents in April, 2019, although this information was required to be given, in writing, within three months. It has been submitted that one of the partners of the petitioner-firm, namely, Munish Arora, has been convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) by the learned Judge, Special Court, Amritsar, in FIR No.11, dated 16.04.2010, lodged at Police Station Gate Hakima Amritsar, as he was found in possession of 460 intoxicating capsules. It has been submitted that the firm is not entitled for the renewal of the license.

4. By making a reference to Clause 17 of the Partnership Deed, Annexure P-1, counsel for the petitioner has argued that even after the death of one of the partners, the serving partners can continue the firm, and they are not required to apply for a fresh license. He submits that the reconstitution of the firm took place with the induction of a new partner by Partnership Deed, Annexure P-4, and within a month thereafter, an application was submitted informing the authorities about the change vide application, Annexure P-5. It

has been further submitted that the judgment dated 29.01.2014, passed by the



learned Judge, Special Court, Amritsar, convicting one of the partners, is under challenge, in appeal before this Court, and the sentence of Munish Arora, has been suspended by this Court vide order dated 23.05.2014.

5. Per contra, State counsel has invited the attention of the Court to the conditions of the license, to submit that the respondents were not informed about the death of a partner within the specified time. She urges that as provided in Section 42 of the Partnership Act, 1932, a firm automatically stands dissolved on the death of a partner. Still further, it is her argument that a license under the Act cannot be granted to a convict, who was found to be in possession of contraband.

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

7. Rule 64 of the Drugs Rules, 1964 (for short “the Rules”) lays down the conditions to be satisfied before a license can be granted. Proviso to the Rule, which is relevant for the purposes of the adjudication of this writ petition, is reproduced herein.

“Provided that the licensing authority may refuse to grant a license to any applicant or licensee in respect of whom it is satisfied that by reason of his conviction of an offence under the Act or these rules, or the previous cancellation or suspension of any license granted thereunder, he is not a fit person to whom a license should be granted under this rule. Every such order shall be communicated to the licensee as soon as possible.”



8. A perusal of the above reproduced proviso shows that a licensing authority may decline grant of a license to any applicant, where it is satisfied that the applicant has been convicted for any offence under the Act or the Rules or there was any previous cancellation or suspension of license, and he is not a fit person to whom the license should be granted. It is not disputed that one of the partners of the firm, Munish Arora, has been convicted for an offence under the NDPS Act. Allegation levelled against him was that he was found in possession of scheduled drugs and was apprehended from outside the premises of the drugs store. Mere fact that appeal against conviction is pending, and remaining sentence has been suspended, is immaterial. As one of the partners is a convict under the NDPS Act, this Court is, therefore, of the view that the petitioner-firm was not a fit person to be granted the license under the Drugs Rules and there is no infirmity in the orders passed by the authorities.

9. Coming to the second aspect of the matter, it deserves to be noticed that one of the conditions mentioned on the license, Annexure P-2, was as under:-

“5. *The license shall inform the Licensing Authority in writing in the event of any change in a 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.”

10. It is evident from the above reproduction that any change in the constitution of the licensee-partnership firm has to be brought to the notice of the authorities within a period of three months and a fresh license has to be applied for in the name of the firm with the changed constitution. One of the partners of the original firm, Shri Aashish Arora, expired in June, 2017. As provided in Section 42 of the Partnership Act, 1932, the partnership firm stood automatically dissolved on account of his death. The factum of the death of the partner was never brought to the notice of the licensing authority and it was only in April, 2019, that an application was submitted to the respondents for renewal of the license along with the copy of the newly constituted Partnership Deed. There has been a delay of more than 20 months in informing the authorities. No provision for extension of time in submitting the application has been brought to the notice of this Court by the counsel for the petitioner. This Court does not find any ground to interfere in the impugned orders.

11. For the afore-going reasons, there is no merit in the writ petition, which is dismissed, with no order as to cost.

(SUVIR SEHGAL)
JUDGE

28.08.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes