

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13073 of 2023

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Lata Khetan Wife of Dr. Ram Babu Khetan Resident of Shivajee Nagar,
Saudagar Mohallah, Ward No. 22, P.S.- Darbhanga (Town).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Additional Chief Secretary, Health Dept. Government of Bihar, Old Secretariat, Patna.
4. The Secretary, Health Department, Government of Bihar, Patna.
5. The Joint Secretary to the Government, Health Department, Section- 15, Government of Bihar, Patna.
6. Sri Ravindra Kumar Singh, In-Charge Drug Controller, Department of Health, Government of Bihar, Patna.
7. The Assistant Drug Controller, Darbhanga.
8. The Drug Inspector, Darbhanga.
9. The Civil Surgeon Cum Chief Medical Officer, Darbhanga.
10. Drug Controller, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Richa Mr. Kumar Pritam
For the State	:	Mr. Birju Prasad, GP 13 Mr. Ajit Anand, AC to GP 13 Mr. Akshay Kumar, AC to GP 13

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

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| 4 | 02-12-2025 | 1. The petitioner has filed the present writ application for quashing the letter No. 28, dated 20.01.2022, issued by the Assistant Drug Controller, Darbhanga, whereby the Drug Licence Nos. DAR-M-47/2007 and DAR-M- |
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47A/2007, dated 30.06.2007, granted in favour of the petitioner, were cancelled under Rule 66 (1) of the Drugs and Cosmetics Rules, 1945, and for quashing the appellate order, dated 20.06.2022, passed, in Appeal Case No. 06 of 2022, by the Appellate Authority -cum- Additional Chief Secretary, Health Department, Government of Bihar, Patna, communicated vide letter no. 665 (15), dated 15.07.2022, whereby the appeal filed by the petitioner under Section 66 of the Rules has been rejected. The petitioner further prays to reinstate and restore the drug licenses.

2. The case of the petitioner, who is the proprietor of M/s Indira Memorial Nursing Home, Darbhanga, is that the Nursing Home also runs a medical store, for which the petitioner was granted Drug Licence Nos. DAR-M-47/2007 and DAR-M-47A/2007, on 30.06.2007, under Rule 64 of the Drugs and Cosmetics Rules, 1945.
3. The license, granted in favour of the petitioner, was being regularly renewed from time to time and remained valid up to 29.06.2022. The routine inspections were also carried out by the Drugs Inspector, Darbhanga, and the inspection reports, dated 25.11.2013 and 13.12.2014,



mention that the Nursing Home was functioning satisfactorily and no material irregularity was found.

4. On 19.09.2018, at about 11:30 A.M., an inspection was conducted by the Drugs Inspector, Shri Awadhesh Kumar Singh, during which the pharmacist, namely, Vijay Kumar Bhagat, was found absent. On the basis of the said inspection report, the Assistant Drug Controller suspended the license of the petitioner for a period of 15 days, vide letter no. 884, dated 22.10.2018.
5. It is the specific case of the petitioner that subsequent to the suspension of license of the petitioner, the Drugs Inspector, through his clerk, demanded illegal gratification of Rs. 80,000/- for revoking the suspension of license of the petitioner. Aggrieved by the action of the Drugs Inspector, the husband of the petitioner lodged a complaint before the Vigilance Department on 08.11.2018, leading to registration of Vigilance Police Station Case No. 51 of 2018 under Section 7 (a) of the Prevention of Corruption Act. A trap was laid and on 29.11.2018, the Drugs Inspector, Shri Awadhesh Kumar Singh, and his clerk, Rajendra, were caught red-handed while accepting illegal gratification of Rs. 60,000/- and



Rs. 21,000/- respectively. Both were arrested and later on suspended.

6. After release from judicial custody, the said Drugs Inspector filed a complaint on 12.08.2019 before the State Drug Controller alleging that the petitioner had obtained the drug license in the year 2007 by using the name of Pharmacist, Vijay Kumar Bhagat, without his consent.
7. Acting on the said complaint, the Assistant Drug Controller issued Memo No. 58, dated 18.01.2020, to the pharmacist, directing him to appear within three days of receipt of the letter. In response, Shri Vijay Kumar Bhagat, vide letter, dated 11.02.2020, admitted that he had worked at the petitioner's Nursing Home and could not appear personally due to illness.
8. Subsequently, another letter purportedly issued by the same pharmacist was brought on record, wherein he denied any association with the petitioner and/or her Nursing Home and alleged that his pharmacist registration certificate had been misused without his consent.
9. Pursuant thereto, the petitioner was served with Memo No. 775, dated 04.09.2020, calling upon her to submit her



explanation. The petitioner submitted a detailed reply on 09.11.2020, enclosing the earlier communications of the pharmacist and asserting that the allegations were false, malicious and motivated, being an act of retaliation following the trap-arrest and suspension of the Drugs Inspector.

10. The Assistant Drug Controller sought legal opinion from the Government Advocate, Darbhanga, vide letter no. 1036, dated 19.11.2020, regarding the two allegedly contradictory letters attributed to the pharmacist. The Government Advocate, by opinion, dated 05.03.2021, advised that expert forensic examination of the disputed signatures be obtained and proceedings be kept in abeyance till completion of such verification. Thereafter, the matter was forwarded to the State Drug Controller, Patna, vide letter no. 286, dated 06.04.2021. Meanwhile, the said Drugs Inspector was dismissed from service, vide Memo No. 1767 (15), dated 29.12.2021, pursuant to the order passed in departmental proceeding.
11. Thereafter, vide letter no. 1738 (15), dated 22.12.2021, the State Drug Controller directed that necessary action be taken against the petitioner. Pursuant thereto, a show-



cause notice, dated 28.12.2021, was issued to the petitioner. The petitioner submitted a detailed reply on 31.12.2021, stating that the drug license had been duly issued to her in the year 2007 after proper verification and no discrepancy had ever been found during routine inspections. She further clarified that Pharmacist Vijay Krishna Bhagat was no longer in her employment and one Shri Ganesh Poddar had worked as pharmacist from 31.07.2019 to 25.06.2021, while Smt. Tisha Amika had been working since 13.03.2021. The petitioner categorically asserted that the allegations were false, frivolous and were nothing but a counterblast and an act of retaliation.

12. Without consideration the reply of the petitioner, the Assistant Drug Controller cancelled the drug licences of the petitioner, vide letter no. 28, dated 20.01.2022, under Rule 66 (1) of the Drugs and Cosmetics Rules, 1945.
13. Aggrieved by the cancellation of the license, the petitioner preferred an appeal, before the Appellate Authority-cum-Additional Chief Secretary, Health Department, Government of Bihar at Patna, bearing Appeal Case No. 06 of 2022. However, the appellate



authority, by order, dated 20.06.2022, rejected the appeal of the petitioner in mechanical manner.

14. Learned Counsel for the petitioner argues that the Assistant Drug Controller, Darbhanga, acted arbitrarily and under undue influence while issuing Memo No. 884, dated 22.10.2018, whereby the drug license of the petitioner was suspended for a period of 15 days without issuing any prior show-cause notice and without affording any opportunity of hearing. The suspension was based solely on the absence of the pharmacist during inspection on 19.09.2018, which is ex facie violative of the principles of natural justice.
15. Learned Counsel further argues that the impugned cancellation order has been passed mechanically, without considering the reply submitted by the petitioner and without conducting any independent enquiry. No expert handwriting opinion was obtained in respect of the alleged disputed signatures, despite the specific recommendation of the Government Advocate to obtain forensic examination. The entire proceedings was initiated on the basis of a complaint lodged by a suspended Drugs Inspector, who acted with malice and in



retaliation after being caught red-handed in a vigilance trap case, rendering the proceedings vitiated by mala fide and colourable exercise of power.

16. It is next submitted that for more than eleven years, i.e., from 2007 to 2018, the petitioner's Nursing Home was subjected to regular inspections and the license was renewed repeatedly without a single adverse remark. The appellate authority has completely ignored the material fact that the concerned pharmacist himself, in his letter, dated 11.02.2020, expressly admitted that he had worked in the petitioner's Nursing Home and has merely reiterated the allegations without independent application of mind, thereby rejecting the petitioner's appeal in a mechanical manner.
17. Lastly, it is submitted that during the inspection, dated 19.09.2018, the Drugs Inspector seized the attendance and salary registers and has not returned the same till date, thereby depriving the petitioner of vital contemporaneous records of employment.
18. Per contra, learned Counsel for the respondents submits that the entire proceedings were conducted strictly in accordance with the procedure prescribed under the law



and adequate opportunity was afforded to the petitioner to defend herself before passing of the impugned orders. The Assistant Drug Controller exercised his powers under Rule 66 (1) of the Drugs and Cosmetics Rules, 1945, to cancel the licenses and the order does not suffer from any infirmity or illegality.

19. It was further submitted that in Appeal No. 06 of 2022, the Appellate Authority granted full opportunity of hearing to the petitioner on 20.06.2022 and thereafter passed a reasoned order, upholding the cancellation order. The appellate authority found that the license had been obtained in illegal manner and without the consent of the pharmacist and there were violations of provisions of the Drugs and Cosmetics Rules, 1945, and the Rules framed thereunder. On these grounds, it was argued that the writ petition is devoid of merit and liable to be dismissed.
20. I have heard learned Counsel for the parties concerned and have perused the materials available on record.
21. From perusal of the records, it is evident that the petitioner has been holding a valid drug license since the year 2007, which was duly renewed from time to time and remained valid up to 29.06.2022. Repeated



inspections over the years did not disclose any serious irregularity in the functioning of the petitioner's nursing home.

22. It further emerges from the record that the subsequent reply given by the pharmacist, Vijay Kumar Bhagat, wherein he denied any association with the petitioner and/or her Nursing Home, was brought on record/produced by the Drugs Inspector, who was suspended in vigilance trap case and later on, dismissed from service. The entire action appears to have been initiated solely on the basis of the complaint made by the said suspended officer, which *ex facie* appears to be motivated and tainted with mala fide intention and in the nature of retaliation.
23. The appellate authority has merely reiterated the allegations and has failed to consider the material and foundational fact that the very genesis of the proceedings was the complaint of a suspended officer, who had earlier misused his official position and demanded illegal gratification, for which he was remanded to judicial custody. It is only after his release from jail that the said complaint came to be filed against the petitioner. Therefore, it appears that the appeal has been rejected in a



mechanical manner, without any independent application of mind.

24. The impugned cancellation of license rests solely on the basis of the complaint of a suspended officer, without due consideration of the serious allegations of misuse of official position and, more importantly, without undertaking any forensic verification of the disputed signatures, despite a clear and specific recommendation of the Government Advocate in that regard. Such action is manifestly arbitrary and legally unsustainable.
25. In the backdrop of the aforesaid discussion, in my considered opinion, the entire proceedings stand vitiated by mala fides and colourable exercise of power. Consequently, the order of license cancellation, as contained in letter no. 28, dated 20.01.2022, as well as the appellate order, dated 20.06.2022, is hereby quashed.
26. The respondents are directed to restore the drug licenses of the petitioner for a period of five months from the date of receipt/production of a copy before him, and before expiry of the period of five months, the petitioner shall be at liberty to apply for renewal of her license in accordance with law.



27. In the result, this writ application is allowed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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