

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE PARTHA SARATHI SEN

WPA 21301 of 2018

Rakesh Kumar Boyed

Versus

State of West Bengal & Ors.

For the petitioner : Mr. Baidurya Ghosal
Mr. Saikat Mukherjee
Mr. Sourav Mukherjee

For the State : Mr. Tapas Ballav Mondal

Heard on : 27.3.2025

Judgment on : 27.3.2025

PARTHA SARATHI SEN, J:

1. The affidavit-in-opposition as filed today on behalf of the respondent / State is taken on record.
2. Learned advocate appearing on behalf of the petitioner also files his affidavit-in-reply. Let the same be also taken on record.
3. At the time of hearing Mr. Ghosal, learned advocate appearing on behalf of the writ petitioner submits before this Court that the drug licences bearing nos. DL – BH-118-S (Msd) & DL-BH-119-SB(Msd) dated 01.01.2001 originally stood in the name of the partnership firm 'M/S Shanti Pharmacy', 384/1, Mansurganj, P.O. – Azimganj, P.S. – Jiaganj and the partners of the said firm were one Shanti Chand Boyed, since deceased (father of the writ petitioner) and Rakesh Chand Boyed i.e. the writ

petitioner herein. It is further submitted that the father of the writ petitioner i.e. Shanti Chand Boyed died on 28.8.2016.

4. At this juncture Mr. Ghosal, learned advocate for the petitioner draws the attention of this Court to Page No. 19 of the instant writ petition being a copy of the receipted challan as deposited by the writ petitioner. It is submitted that as per the rules, an application for grant of licence due to change of constitution of the partnership firm is supposed to be submitted within three months but the same was submitted by the writ petitioner on 30.11.2016. However, according to Mr. Ghosal the said two days delay is not on account of any delay or laches on the part of the writ petitioner since from page no. 19 of the instant writ petition it would reveal that the challan showing deposit of requisite fees was deposited on 24.11.2016 with the State Bank of India but due to failure in system of SBI the said challan was generated on 28.11.2016.

5. At this juncture Mr. Ghosal draws the attention of this Court to the Memo dated May 4, 2017 as issued by the respondent no. 2. It is submitted that respondent no. 2 had miserably failed to visualize that two days delay in submission of the application is not due to fault on the part of the writ petitioner but the same occurred on account of system failure of the State Bank of India.

6. Mr. Ghosal, thus, requests this Court to issue an appropriate writ / writs for quashing of the said memo dated May 4, 2017 with a further direction upon the respondent no. 2 to issue the aforementioned two licences in the name of the writ petitioner forthwith.

7. Par contra, Mr. Mondal, learned advocate appearing on behalf of the respondent / State submits before this Court that the instant writ petition is not maintainable in view of the fact that in the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the

said Rules of 1945 in short) there is a provision for filing an appeal, in the event a licence of a licensee is suspended or cancelled.

8. It is submitted by Mr. Mondal that on account of availability of an alternative remedy and for not availing such alternative remedy as provided under Section 66 (2) of the said Rules of 1945, the instant writ petition may be dismissed.

9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates appearing on behalf of the contending parties it appears to this Court that it remains undisputed that the aforementioned two licences originally stood in the name of 'M/S. Shanti Pharmacy'. It is also undisputed that one Shanti Chand Boyed, since deceased (father of the writ petitioner) and the present writ petitioner i.e. Rakesh Chand Boyed were the partners of the said partnership firm and the said Shanti Chand Boyed died on 28.8.2016. Admittedly, the writ petitioner made an application for issuance / renewal of the drug licences in the name of 'M/S. Shanti Pharmacy' after the death of his father who was the partner of the said firm on 30.11.2016 i.e. two days after the stipulated period as provided in the said Rules of 1945.

10. On perusal of the impugned memo dated May 4, 2017 as issued by the respondent no. 2 it appears to this Court that for the said delay, the respondent no. 2 was not at all inclined to issue and / or renew the aforementioned two licences in the name of the partnership firm i.e. 'M/S. Shanti Pharmacy'.

11. As rightly pointed out by Mr. Mondal that under Rule 66 (2) of the said Rules of 1945 the writ petitioner could have preferred an appeal within three months from the date of passing of the said order of rejection. However, in considered view of this Court for not preferring such appeal within the stipulated period the writ petitioner cannot be considered to be remediless in view of the fact that while issuing the memo

dated May 4, 2017, the respondent no. 2 had failed to consider the predicament of the writ petitioner in submitting the application for licence beyond the stipulated period and such delay occurred on account of the system failure in the State Bank of India. It further appears to this Court that before issuing the memo dated May 4, 2017, the respondent no. 2 did not give any opportunity of hearing to the writ petitioner to explain the delay and, therefore, in considered view of this Court there occurred a violation of principles of natural justice.

12. It is a settled principle of law that the High Court has the discretion not to entertain a writ petition in an appropriate case. One of the restrictions placed on the power of the High Court is when an effective alternative remedy is available to the aggrieved person. However, exception to the rule of alternative remedy arises where the writ petition has been filed for the enforcement of the fundamental right protected by Part III of the Constitution or there has been a violation of the principles of natural justice or where the order or proceeding is wholly without jurisdiction or the vires of the legislation is challenged. The same view was taken by the Hon'ble Supreme Court in the report decision of ***Radha Krishnan Industries vs. State of Himachal Pradesh*** reported in **2021(6) SCC 771**.

13. Keeping in mind the aforementioned proposition of law as decided by the Hon'ble Supreme Court if I look to the factual aspect of this case, it appears to this Court that the memo dated May 4, 2017 as issued by the respondent no. 2 is perverse since respondent no. 2 has failed to consider the predicament of the writ petitioner in submitting his application for licences / application for renewal of licences in due time and the delay of two days occurred for the reason beyond his control.

14. This Court thus considers that there are sufficient merits in the writ petition. Accordingly, the instant writ petition is hereby allowed.

15. Consequently, the memo dated May 4, 2017 as issued by the respondent no. 2, that is the Assistant Director of Drugs Control, Murshidabad District Drugs Control Office, Shantikanan, Station Road, Berhampore, District – Murshidabad, Pin – 742101 is hereby quashed.

16. The respondent no. 2, that is the Assistant Director of Drugs Control, Murshidabad District Drugs Control Office, Shantikanan, Station Road, Berhampore, District – Murshidabad, Pin – 742101 is directed to consider the application in Form No. 19 dated 30.11.2016 in accordance with law ignoring two days delay in submitting the said application by the writ petitioner and after giving an opportunity to the writ petitioner, he is directed to pass a reasoned order positively within a period of thirty working days from date of communication of the server copy of this order.

17. The respondent No. 2 that is the Assistant Director of Drugs Control, Murshidabad District Drugs Control Office, Shantikanan, Station Road, Berhampore, District – Murshidabad, Pin – 742101 is directed to communicate its decision to the writ petitioner soon thereafter either by special messenger or through email, if email details of the writ petitioner is provided to him by the writ petitioner at the time of hearing.

18. Mr. Mondal, learned advocate appearing for the State is hereby requested to communicate the server copy of this order to the respondent no. 2, that is the Assistant Director of Drugs Control, Murshidabad District Drugs Control Office, Shantikanan, Station Road, Berhampore, District – Murshidabad, Pin – 742101 for his immediate compliance.

19. Respondent no. 2 is here by directed to act on server copy of this order.

20. Similar liberty is given to the learned advocate for the writ petitioner to communicate a server copy of this order to the respondent no. 2.

21. With the disposal of the instant writ petition, all connected pending applications, if there be any, stands disposed of.

22. Accordingly, writ petition being WPA 21301 of 2018, is thus, disposed of.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Partha Sarathi Sen, J)