

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1391 OF 2025

M/s. Saboo Sidique Hospital Medical

...Petitioner

$$V_S.$$

State Government of Maharashtra & Anr.

...Respondents

Mr. R. C. Mishra i/b. Tripathi & Associates for the Petitioner.

Ms. T. J. Kapre, AGP for State.

**CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE: 06 FEBRUARY 2025

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

“a) That this Hon’ble Court be pleased to set aside and quashed the revised suspension order dated 06.01.2025 passed by the respondent no.2 in the interest of justice.

c) That this Hon'ble Court be pleased to call the records and proceedings from the office of the respondents for assessing the legality and illegality of the revised suspension order dated 06.01.2025 in the interest of justice."

2. Learned counsel for the petitioner has submitted that by the impugned order dated 06 January 2025 passed by respondent no.2, the petitioner's licence to run the medical shop granted under the provisions of the Drugs and Cosmetics Act, 1940 (for short, "the **Act**") and the Drugs and Cosmetics Rules, 1945, has been suspended for a period of 15 days from 07

February 2025 to 21 February 2025.

3. The petitioner, as per the provisions of the Act, has already preferred an appeal before the State Government/appellate authority which came to be filed on 13 January 2025, however, so far, the appeal has not been taken up for hearing. Copy of the appeal is annexed at Exhibit-D (page 41 of the paper-book) which indicates the date of filing to be 13 January 2025.

4. Learned counsel for the petitioner submits that in the event the appeal is not heard and/or the prayers for stay as made therein are not considered, the petitioner would be required to suffer the period of suspension and in the event the appeal is allowed, such penalty of suspension would be required to be unwarrantedly undergone by the petitioner. It is, therefore, his submission that an appropriate direction be issued to the appellate authority to hear the appeal expeditiously and/or the prayer for stay to be considered and till that period, the impugned order dated 06 January 2025 ought not to be acted upon. It is also his submission that in the event the appeal of the petitioner fails, the period of suspension can be postponed after the order is passed by the appellate authority.

5. In support of the aforesaid contentions, learned counsel for the petitioner has placed reliance on the decision of this Court in **M/s. Apna Chemist vs. Assistant Commissioner (Zone-3) & Anr.** in Writ Petition

No.305 of 2024 decided along with other petitions by judgment dated 10 January 2024. In such orders passed by the Division Bench, in identical circumstances, this Court observed that there was substance in the contentions of the petitioners therein that the petitioners ought not to suffer an unwarranted suspension when their appeals were pending. It was also observed that if the appeal fails, the petitioners could suffer suspension, if the same was continued by the appellate orders. The relevant observations are made in paragraph 6 of the said judgment which read thus:-

“6. Having heard learned Counsel for the parties and having perused the record, in the facts and circumstances of the case, we find much substance in the contentions as urged on behalf of the petitioners. The petitioners in the present case are aggrieved by the orders passed by respondent no. 1 suspending their licence as noted above. They have taken recourse to a statutory remedy as available to them under the rules by filing their respective appeals with the Appellate Authority/State Government. Such appeals are in fact filed well in advance with an intention that the appeals are decided prior to the period of suspension of their licence as ordered by respondent no. 1. The intention of the petitioners being that in the facts and circumstances of their respective case, they ought not to suffer an unwarranted suspension. Thus, the concern of the petitioners is that the remedy of an appeal as provided under the rules should not be rendered otiose, so as to bring about a situation, that after the suspension period is over, the proceedings are thereafter decided, which would cause a serious prejudice to the petitioners. We are quite in agreement with the petitioners. In such circumstances, there cannot be a scope for a theory of ‘operation being successful however the patient dead’. The petitioners would certainly have a legal right to know, the status of their challenge insofar as the interim reliefs or the final reliefs they seek in their appeals, before they are made to suffer the suspension order. We would also observe that in the circumstances as in the present proceedings, the non passing of an appropriate order (interim or final), would also have a direct bearing on the rights of the petitioner to carry on trade, occupation/business. This in as much as, such inaction on the part of the appellate authority is likely to affect the rights guaranteed to such

persons under Article 19(1)(g) of the Constitution read with Articles 14, 21 and 300A of the Constitution. The appellate authority is thus expected not to overlook such significant obligation in relation to the powers the appellate authority wields, in adjudication of the statutory appeals. Once the remedy is provided by law, it is required to be an “effective remedy” in letter and spirit. The appellate authority hearing the statutory appeals would be required to be alive to the consequences, an order subject matter of the appeal would bring about qua the appellant before it.”

6. In pursuance of the discussion which had taken place at the earlier hearing on behalf of the petitioner, an affidavit-cum-undertaking of Mr. Mohamed Husain Maniar, partner of the petitioner, is placed on record to state that the petitioner has been issued a licence in the name of “M/s. Saboo Sidique Hospital Medical” which shall be changed as “M/s. Saboo Sidique Medical”. We accept the said undertaking of the petitioner. Accordingly, within one week from today, the petitioner shall take necessary steps to make an application for the change of its name as described in the licence, as also take all consequential steps to change the display board of its medical store in the name of “M/s. Saboo Sidique Medical Store”. Such application for modification of the name of the petitioner in the licence, be considered and decided by the licencing authority who shall take immediate steps to issue an amended licence. Further, the licencing authority shall also verify the compliances which are made by the petitioner by having a site visit.

7. In this view of the matter, it is in the interest of justice that the appeal

filed by the petitioner be heard by the Appellate Authority and decided in accordance with law. The petition hence is disposed of by the following order:-

ORDER

- (i) The appellate authority is directed to hear the petitioners pending appeal and/or stay application as expeditiously as possible and in any event within a period of eight weeks from the date, a copy of this order is presented before the appellate authority.
- (ii) Needless to observe that if the appeal is fixed for hearing, in the immediate future, the same be taken up and decided as per the schedule for hearing so fixed.
- (iii) Till the appeal/stay application is decided, the impugned orders dated 06 January 2025 suspending petitioner's licence, subject matter of challenge in the appeal, shall remain stayed.
- (iv) Needless to observe that in the event the petitioner fails in its appeal, certainly it would be within the powers and authority of the appellate authority to modify the period of suspension and impose a future period of suspension on the petitioner.
- (v) In regard to the modification of the petitioner's name in the

licence, our directions in paragraph no.4 be complied by the petitioner and orders be appropriately passed by the licencing Authority as directed.

(vi) All contentions of the parties on the pending appeal are expressly kept open.

8. Disposed of in the above terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)