(2003) 03 PAT CK 0092

In the Patna High Court

Case No : C.W.J.C. No. 13234 of 2002

Bihar Chemist and Druggists Association and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:
Drugs and Cosmetics Act, 1940 — Section 33
Drugs and Cosmetics Rules, 1945 — Rule 59(2), 64

Citation : AIR 2003 Patna 110 : (2003) 2 PLJR 486

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Tara Kant Jha and Abhay Kumar, for the Appellant; J.D. Singh, Govt. Pleader 1, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—There are two petitioners before this Court, petitioner No. 1 is the Association of Chemist and Druggists of Bihar and petitioner No, 2 is the General Secretary of the Association and a holder of drug licence.

2. The petitioners seek to challenge the direction making the production of a ''no objection certificate'' from the Commercial Taxes Department as obligatory for renewal of drug licences issued under the Drugs and Cosmetics Act, 1940. The direction is contained in a Circular letter issued by Commissioner, Commercial Taxes to all the Divisional Commissioners and District Magistrates under his memo No. 178. dated 10-1-2002 (Annexure-1). Following the direction of the Commissioner, Commercial Taxes, the Secretary-cum-Deputy Drug Controller, Bihar, Patna issued Circular letter, dated 9-11-2002 (Annexure-2) to all Regional Licensing Officers, Drug Control Administration. Bihar asking for details of wholesale and retail medicine shops and manufacturing units situate under their respective areas and further in regard to the number of shops of which licences were duly renewed on the basis of the no objection certificate issued by the Commercial Taxes Department and the number of cases in which the matter of

renewal of licence was still pending and the action proposed to be taken against those units. On the basis of the impugned direction, the Regional Licensing Authority, Drug Control Administration. Munger Division, Munger issued a Circular under his memo No. 464, dated 23-10-2002 (Annexure-3) asking all drug shops, the licences of which were to be renewed in that year to produce, among others, their respective sales tax numbers or a no objection certificate from the Commercial Taxes Department.

3. Mr. Tara Kant Jha, Senior Advocate appearing for the petitioners submitted that the condition of production of a no objection certificate from the Commercial Taxes Department for renewal of drugs licences was wholly unauthorised, illegal and unenforceable in the eye of law. Mr. Jha pointed out that the relevant provisions for the grant and renewal of a licence for sale of drugs in wholesale or in retail were contained in the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945, framed thereunder. The provisions contained in Part VI of the Rules provided for a complete mechanism for grant and renewal of licences and laid down the conditions subject to which the licences were to be granted and/ or renewed. On the other hand, the levy and realisation of sales tax was governed and controlled by the provisions of the Bihar Finance Act which gave ample powers to the authorities to deal with cases of tax evasion in any form. The matter of sale and purchase of drugs and the collection of sales tax were regulated by two different sets of statutes and the authorities under any one of them could not interfere or meddle with the affairs of the other by issuing a direction in the nature of a executive circular.

4. The submission appears to me to be well founded. It is a legal axiom that all executive action must have a legislative sanction. In this case, the State counsel, despite repeated opportunities, failed to point out any legal provision that would sanction the issuance of the impugned direction. In the counter-affidavit filed on behalf of the State all that is said is that it had come to the notice of the Government that a large number of medicine shops and manufacturing units of medicine were running in the State without having any valid licence under the Sales Tax Act and were, thus, causing financial loss and in that background the Government had taken a decision to check the practice of tax evasion and as such the impugned direction as contained in Annexure-1 was issued to all licensing authorities.

5. In the absence of any provision authorising the Commissioner. Commercial Taxes, it is difficult to sustain the direction issued by him and the grievance of the petitioners that the impugned direction would only put them to further harassment in another Government Department/Office cannot be easily brushed aside.

6. The submission of Mr. Jha finds full support from a recent decision of this Court in Sagar Medical Hall v. State of Bihar AIR 2002 Pat 57 . In paras 5 and 6 of that decision, it was observed and held as follows :

"5............ Thus, the conditions which are required to be satisfied for grant of licence or its renewal is provided under the Rules itself. The Rules nowhere confer on the Licensing Authority the power to refuse or renew the licences, on the ground other than what has been provided therein. Here in the present case, grant and renewal of licence has been refused only on the ground that as a matter of policy, the State Government has temporarily decided not to grant licence on the ground that number of shops available in the State is sufficient to meet the demand of the public.

6. As stated earlier, the grant and renewal of drug licence is governed by the Rules and it nowhere provides that the licence can be declined or renewal can be refused on the ground that in the opinion of the State Government, the number of shops are sufficient to meet the demand of the public. I am of the opinion that when grant or renewal of licence is governed by the statutory rule, decision of such a question has to be governed by the provisions of the Rules and executive decision taken by the State Government, cannot override the same. Here in the present case, conditions for grant and renewal of licence have been provided under the Rules but the decision taken by the State Government overrides the same. In my opinion, same is also not, permissible."

7. For the reasons discussed above, the submissions made on behalf of the petitioners are accepted. The impugned directions are held to be illegal and are set aside.

8. In the result, this writ petition is allowed but with no order as to costs.

