(1972) 08 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No. 656 of 1972

Bishamber Nath — APPELLANT

Vs

The Drugs Licensing Authority and Another — RESPONDENT

Date of Decision : 30-08-1972

Acts Referred:

Citation : AIR 1973 Delhi 294 : (1973) ILR Delhi 288

Hon'ble Judges : V.D. Misra, J;S.I. Rangarajan, J

Bench : Division Bench

Advocate : G.N. Aggarwal and V.P. Kohli, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This partnership firm styled ''Gobind Medical Hall'' held four licenses under the Drugs and Cosmetics Act, 1940. The constitution of the firm changed in or about April, 1971 by including the petitioner as a partner. Owing to the change in the constitution new licenses were issued on or about the 27th May, 1971 in Forms 20, 21, 20-B and 21-B as per the rules made under the said Act. (Copies of those licensees are Annexurcs A.B.C and D to the Writ Petition). The licenses in Forms 20 and 21 are for authorised retail sales; licenses in Forms 20-B and 21-B are for wholesale dealings in respect of drugs mentioned. The licenses in Forms 20 and 20-B are for drugs which include those coming under the definition of other than biological and other special products, whereas the licenses in Forms 20-B and 21-B include drugs coming within the definition of biological and special products as defined in the Rules. "Novalgin" falling within the category of Schedule drugs (manufactured by M/s. Hoechst Pharmacsuticals Ltd., Bombay) is covered by licenses in Form 20 and could not Therefore, be sold Authority & Another in retail except on the prescription of a Registered Medical Practitioner. All the licenses were issued to the petitioner on 27.5.1971 which were valid up to 31.12.1971.

(2) On 16.10.1971 the Drugs Inspector (Shri V. B. Bajpai) inspected A the

premises where the petitioner carried on business and found 186 strips of 10 tablets of Novalgin B. No. Dla bearing the label of M/s. Hoechst Pharmaceuticals Ltd., Bombay and in addition to the under-mentioned 80x10 strips. Shri BishamberNath (petitioner) was, according to the Drugs Inspector present at the shop at that time.

(3) On 20.10.1971 the Inspector of Drugs issued a Memorandum to the petitioner firm stating that out of the above 186 strips of 10 tablets each of Novalgin (of the above description plus 80 strips of 10 tablets each out of which samples consisting of 4 x 10 strips of both the Batches were taken for test and analysis after giving an intimation to Shri Bishambar Nath in Form No. 17. The remaining stocks of Novalgin had been seized and a receipt also given to Shri Bishambar Nath, but he could not produce, when demanded, the purchase bill for the two Batches of Novalgin tablets. By the said Memorandum the firm was required to disclose the names, addresses and other particulars of the persons from whom the said drugs were acquired within seven days of the receipt of that Memorandum. In the reply, sent by Shri Bishamber Nath on behalf of the petitioner-firm (dated 28.10.1971) he had mentioned that 80 strips of 10 tablets each of Batch No. Duc were purchased from National Pharmacy, Bhagirath Palace, Delhi Vide Bill which was undertaken to be produced when required and that 186 x 10 strips of Navalgin had been offered for sale by one S. Harjeet Singh son of Teja Singh resident of Nehru Gali, Gandhi Nagar, Delhi, who had stated that he was the agent of an authorised stockist and when asked to give the bill he promised to give the bill later and accept payment. Immediately thereafter the premises were raided. The position taken was that these tablets (186 x 10) were not exhibited or intended for sale.

(4) By Memorandum dated 29.10.1071 the Licensing Authority and Assistant Drugs Controller, Delhi issued a notice under Rule 66 framed H under the said Act to show cause why the aforesaid four licenses should not be suspended or cancelled by reason of misbranding the said drug and thus contravening S. 18(a) (ii) of the Act. It was specificallylstated therein that 186 x 10 tablets were not the product of the original manufacturer (M/s Hoechst Pharmaceuticals Ltd., Bombay) but an imitation of the genuine drug, the labels were false and misleading and hence were misbranded within the meaning of Section 17 of the Act. The reply to the show cause notice was to reach the said officer by the 3rd November, 1971.

(5) In the petitioner-firm''s reply dated 1/3.11.1971 it was asserted that the provisions of the Act were not contravened. The position was stated to have been made clear in the previous letter of 28.10.1971. Owing to the national emergency a lenient view of the whole matter was asked to be taken.

(6) By order dated 8.11.1971 the Licensing Authority and Assistant Drugs Controller informed the petitioner--firm that the reply given to the show cause notice was considered and found unsatisfactory and that the licenses in Forms 20,21, and 20-B and 21-B were cancelled under Rule 66 of the Drugs and

Cosmetics Rules, 1940.

(7) Aggrieved by the said order the petitioner- firm filed an appeal to the Lt. Governor who by his order dated 4.5.1972 dismissed the appeal. The first grievance of the petitioner is that the order dated 8.11.1971 passed by the Licensing Authority and Assistant Drugs Controller, Delhi is not a speaking order. It is worth recalling in in this context that the fact of 186 x 10 tablets (with which alone we are now concerned) being found in the shop of the petitioner-firm was not disputed nor was it stated in the petitioner''s letters to the Inspector of Drugs or the Licensing Authority and- Assistant Drugs Controller that the said tablets (186x10) were genuine and not spurious. The Licensing Authority and Assistant Drugs Controller was, there- fore, only concerned with whether the Explanation having been given by the petitioner-firm in relation to 186 x 10 Novalgin tablets (which were spurious, not genuine and were misbranded) was satisfactory or not. In these circumstances there was not much need to write a more detailed order than to state that the Explanation given by the petitioner was not satisfactory. It had not even been mentioned in the petitioner''s letter dated 28.10.1971 that the 186 x 10 '' tablets had been purchased from a duly licensed manufacturer, distributor or dealer". Section 19(3) of the Act, as amended in 1964, reads as follows :

"19(3)-Aperson, not being the manufacturer of a drug or cosmetic or his agent for distribution thereof, shall not be liable for a contravention of section 18 if he proves- (a) that he:acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof; (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and (c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it."

(8) All that was asserted by the petitionsr-firm in the reply dated 28.10.1971 was that S. Harjeet Singh had stated that he was an agent of an authorised stockist. It was not even asserted, Therefore, that the sale (or even offer of sale according to the peititioner-firm) was by a duly licensed manufacturer, distributor or dealer. In these circumstances the order passed by the Licensing Authority and Assistant Drugs Controller dated 8.11.1971 could not be attacked on the ground that it was not a speaking order.

(9) The Lt. Governor has gone into the question elaborately. He referred in his order to the test and analysis report of the Government Analystdated24.11.1971 declarinfg the seized samples as not of standard quality and that it did not contain Anlgin at all. The complaint of the petitioner-firm is that it was not supplied a copy of the said report and therefore the Lt. Governor should not have taken the same into consideration against it. There is no substance in this grievance because it is worth repeating that the petitioner did not dispute the assertion in the show cause notice sent to him that the said tablets (186 x 10) were not genuine in terms noticed already. Even now there is no dispute about it.

(10) It was next contended for the petitioner-firm that the Lt. Governor had also taken into account the statement of S. Harjeet Singh, stated to have been made behind the back of the petitioner-firm and of which it was not informed, that he never dealt with any medicine at all but was working in the embroidery line. As already observed in the absence of even an assertion by the petitioner-firm that it had obtained the said tablets (186 x 10) from any duly licensed manufacturer, distributor or dealer, it cannot say that it was not liable For the contravention u/s 18 of the Act once their spurious character was not even disputed. Section 18(a), it is worth noting, prevents any person from manufacturing for sale, selling, stocking or exhibiting, for sale or distributing any drug which is not of standard quality, misbranded etc.

(11) It was finally contended on behalf of the petitioner-firm that since the said Novalgin tablets had no connection with the license in Form 21 and 21-B those licenses should not be cancelled. It has been explained to us on behalf of the respondents to whom a notice to show cause, was issued as to why this Writ Petition should not be admitted, that Rule 66 empowers the Licensing Authority to cancel a license not only for failure to comply with any of the conditions of the particular license but also with any other provision of the Act or the rules there under. There having been a breach of Section 18 of the Act all the licenses could be cancelled under Rule 66. A mere reading of Rule 66 completely supports the respondents'' contention :

"66.Cancellation and suspension of licenses.-(1) The licensing authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons Therefore, cancel license issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the license or with any provisions of the Act or Rules there under: Provided that if such failure or contravention is the consequence of an act or omission on the part of an agent or employee, the license shall not be cancelled or suspended unless the licensing authority is satisfied: (a) that the act or omission was instigated or connived at by the owner of the business or, if the owner is a firm or company, by a partner of the firm or a director of the company; or (b) that the owner of the business or an agent or employee of the owner had been guilty of similar act or omission within twelve months before the date on which the act or omission in question took place and that the owner had, or reasonably ought to have had, knowledge of the previous act or omission; or (c) if the act or omission was a continuing act or omission that the owner of the business had or reasonably ought to have had, knowledge of that previous act or omission; or (d) that the owner of the business had not used due diligence to ensure that the conditions of the license or the provisions of the Act or the Rules there under were observed. (2) A licenses whose license has been suspended or cancelled may appeal to the State Government within three months of the date of the order."

(12) A feeble argument was advanced that the expression ''a license'' only empowers one license to be cancelled and not more. It is obvious that the said expression means the cancelling of any license issued under that part, namely, Part Vi (Sale of drugs other than Homoeopathic Medicines.

(13) Having regard to the fact that the said Act deals with such an important item of human consumption like drugs and the detriment to health and life which violation of such Act and Rules would cause, Rule 66 has been worded in the above manner. Section 27 of the Act provides for a very severe sentence up to 10 years without any limit of fine.

(14) There is no merit in the Writ Petition, which is accordingly dismissed.

