

(2016) 01 PAT CK 0123

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15086 of 2015

Durga Homoeo Hall

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 85EC

Citation : (2016) 165 AIC 411 : (2016) 2 PLJR 746

Hon'ble Judges : Ahsanuddin Amanullah, J.

Bench : Single Bench

Advocate : Mr. Rajeev Kumar Singh and Mr. Priyadarshi Matri Sharan, Advocates, for the Appellant; Mr. Parth Sarthi, GA 11 with and Mr. Apurva Kumar, AC to GA 11, for the Respondent

Final Decision : Disposed Off

Judgement

Ahsanuddin Amanullah, J.(Oral) - Heard learned counsel for the parties.

2. The challenge in the present writ application is to Memo No. 227 dated 29.07.2015 issued by the respondent no. 2 by which the license of the petitioner to run the homoeopathic shop in question has been cancelled.

3. Learned counsel for the petitioner submits that from the plain reading of the impugned order, it is clear that there is only a wild allegation that the petitioner was selling medicines containing high level of alcohol which was in violation of the relevant provisions of law. It is submitted that prior to the same a notice dated 25.07.2015 was issued to the petitioner which was equally vague as there was no supporting material either with regard to any seizure made from his shop or any complaint received of any person and further the show cause which was dated 25.07.2015 was received by the petitioner only on 29.07.2015 whereas the impugned order of termination is also dated 29.07.2015. It is submitted that it is a blatant and flagrant violation not only of the principles of natural justice but also of the arbitrariness on the part of the respondent no. 2. It is submitted

that the law with regard to show cause is settled and the authority which issued show cause has to ensure that the same is meaningful inasmuch as there has to be a specific case of the authority against the person noticed which has to be clearly spelt out in the show cause so that the person who is obliged to give his reply is in a position to be aware of the allegations against him and then give any explanation he may be having.

4. Learned counsel for the State, who has filed counter affidavit, submits that pursuant to complaints having been received by the Collector, Katihar right from July, 2014, on 27.07.2015 he had directed the respondent no. 2 to take action in accordance with law including termination of the license and pursuant to the same action has been taken. However, he is not in a position to justify or counter the fact that show cause neither mentions even a single specific instance nor discloses any seizure made from the shop of the petitioner to justify the allegation.

5. After having considered the submissions of learned counsel for the parties, the Court is of the considered opinion that the impugned order cannot be sustained. The same based only on surmises and conjectures without there being any supporting material by way of evidence or seizure and further the petitioner not having been given any opportunity to reply to the perfunctory show cause, the whole exercise is a gross display of arbitrary exercise of power by the authority.

6. For the reasons aforesaid, the order contained in Memo No. 227 dated 29.07.2015 passed by the respondent no. 2 is quashed. The Court makes it clear that the direction of the Collector, Katihar to the respondent no. 2 to proceed in the matter of there being widespread selling of illegal and objectionable products containing a high level alcohol under the garb of homeopathic medicines is laudable and cannot be faulted but the exercise has to be carried out by the officers concerned in accordance with law and the procedure prescribed.

7. The writ petition stands disposed off in the aforementioned terms.