

(2013) 01 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 10395 of 2012

Durgaprasad Suwarnakar

APPELLANT

Vs

The State of Maharashtra, The Licensing Authority and
Assistant Commissioner Food and Drugs Administration (MS)
Jalgaon and The State Minister for Food and Medicine
Administration Maharashtra State, Mantralaya, Mumbai

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 3 ALLMR 393 : (2013) 1 BomCR 699 : (2013) 3 MhLj 770

Hon'ble Judges : Sunil P. Deshmukh, J

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; K.G. Patil, A.G.P. for State, for the Respondent

Final Decision : Allowed

Judgement

Sunil P. Deshmukh, J.—Rule. Rule is made returnable forthwith. With consent of the learned counsel for the parties, the matter is taken up for final hearing at the stage of admission itself. The petitioner takes exception to the manner in which the order in Appeal preferred against the order dated 25th July, 2012 passed by the Licencing Authority and Assistant Commissioner Food and Drugs Administration, State of Maharashtra, Jalgaon had been passed, whereunder the licence granted to the petitioner stands cancelled. According to the petitioner, show cause notice has been issued only for suspension of licence, whereas order passed by the authority straight away cancels the licence. The counsel for petitioner further contends, that apart, discrepancies, which have been informed by the authority concerned, are of minor in nature and do not call for such a drastic action. Petitioner had therefore approached the Appellate Authority - State of Maharashtra and had also sought stay to the operation of the order passed by the Licencing Authority and Assistant Commissioner Food and Drugs Administration, under an application therefor.

2. It is contended that, however, while petitioner had been heard by the State-Appellate Authority, only on the stay application, an order has been passed dismissing Appeal itself. As such, according to the petitioner, there is flagrant violation of principles of natural justice.

3. It has been vehemently submitted that the petitioner had no opportunity to defend his case against show cause notice issued by Licencing Authority and Assistant Commissioner Food and Drugs Administration, since entire record had been seized by the Police under criminal prosecution launched in respect of the same set of facts. The petitioner had so submitted before the concerned authority that in order to effectively deal with the objections/queries made in the show cause notice, record in possession of the Police would be relevant. Yet concerned authority had completely ignored the said request of the petitioner and passed order cancelling licence of the petitioner permanently, when in fact show cause notice was seeking explanation as to why licence should not be suspended. The concerned authority has perfunctorily passed the order without taking into account the reply submitted by the petitioner. The Appellate Authority as well, has relied on allegations in the show cause notice and has also passed the order without taking into account the request of the petitioner and also for the reasons on which there was no show cause notice.

4. Learned AGP is not in a position to dispute the aforesaid situation. The appellate Authority despite reply dated 20th July, 2012 submitted on 24th July, 2012 went to on state that there has been no reply to the show cause notice without reference to the reasons and explanation given in response to the show cause notice. This is an indication of the fact that there had been no proper application of mind to the situation.

5. In view of the aforesaid, it would not be inappropriate to remit the matter back to the Appellate Authority for consideration afresh of the whole case on merits after giving opportunity to the parties concerned.

6. Under the circumstances, order communicated by the Appellate Authority under its covering letter dated 06.03.2012, particularly referred to in prayer clause [B] as dated (nil), November 2012 is set aside. The appellate Authority would give opportunity of rehearing to the petitioner in the appeal as per its convenience and dispose of the Appeal, in any case, within a period of two months from the date of receipt of this order.

7. In the event the petitioner seeks hearing on stay, if an application is made for said purpose, the Appellate Authority may hear the application for stay and pass appropriate order on merits. Petition stands allowed. Rule is made absolute in above terms. No costs.