
(2014) 01 KL CK 0068

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18074 of 2006

Francis T.V.

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 01-01-2014

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 66(2)

Citation : (2014) 1 ILR 534 : (2014) 1 KHC 261 : (2014) 2 KLJ 194 : (2014) 1 KLT 391 : (2014) 3 RCR(Civil) 654 : (2014) 3 RCR(Criminal) 636

Hon'ble Judges : Thottathil B. Radhakrishnan, J;P. Ubaid, J

Bench : Division Bench

Advocate : Varghese C. Kuriakose, Praveen K. Joy and Thankom G, for the Appellant; Noble Mathew, Senior Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This writ petition is filed challenging Ext. P10 order passed by the State Government in an appeal under Rule 66(2) of the Drugs and Cosmetics Rules, 1945, hereinafter referred to as the "Rules", for short. Admitted situation, going by paragraph 21 of the counter-affidavit filed by the State, is that the writ petitioner was not heard by the Appellate Authority in relation to his appeal, though the counter-affidavit says that the contentions in the appeal memorandum were considered. Heard the learned counsel for the petitioner and the learned Senior Government Pleader.

2. The learned counsel for the petitioner, making reference to the contents of the impugned order and the appeal that was preferred to the State Government, pointed out that the questions raised for consideration could not have been decided without affording an opportunity of personal hearing and that the petitioner had requested for an opportunity of personal hearing. It is also pointed out that the statutory provision does not exclude the personal hearing.

3. The learned Senior Government Pleader however argued that the nature of consideration of the appeal by the State Government demonstrates expression of appropriate consideration of the grounds in appeal raised.

4. Rule 66 of the Rules governs cancellation and suspension of licences. The authority to cancel and suspend licences is conferred by enjoining that the licensing authority may, after giving the licensee an opportunity to show-cause why such an order should not be passed, cancel a licence or suspend it for such period as may be found fit. The order of cancellation or suspension after such opportunity to show-cause is required to contain the reasons for making such an order. The cardinal jurisprudential frame in which sub-rule (1) of Rule 66 operates is that the licensing authority has to come to the opinion that the licensee has failed to comply with any of the conditions of the licence or with any provisions of the Drugs and Cosmetics Act, 1945, for short, "DC Act" or rules thereunder. The proviso to Rule 66(1) enumerates different grounds on which the licensee can plead that the licence may not be cancelled or suspended if the failure or contravention of the provisions is such as would fall within the matters enumerated under that proviso. After sub-rule (1) of Rule 66, sub-rule (2) of that Rule provides a comprehensive appeal against the order of suspension or cancellation. That appeal is provided to the State Government. It does not restrict the grounds of appeal in any manner. Therefore, the Appellate Authority's power and jurisdiction under sub-rule (2) of Rule 66 of the Rules is co-extensive with that of the licensing authority's jurisdiction under sub-rule (1) of Rule 66, subject only to the well settled principles as to when such an Appellate Authority would interfere or not. The jurisdictional facts which may be relevant for considering as to whether a particular licence is to be cancelled or suspended would include very many disputed facts that could arise for decision on the basis of the grounds of objections taken by the licensee, when the opportunity to show-cause is extended. Therefore, the Appellate Authority's consideration could also spread over to such issues as well. As rightly argued on behalf of the petitioner, there is no restriction in the statutory provisions as to the grounds of appeal. Rule of personal hearing is also not excluded. Hence, the Appellate Authority could not have ordered the appeal without extending an opportunity of personal hearing. On this short reason, the impugned Ext. P12 has to go. Since this writ petition is being decided only on grounds, as to rule of hearing in re the statutory appeal under the Rules, we are not called upon to express anything on the merits of the contentions and it is clarified that this judgment does not speak anything on the merits of the licensee's contentions or the pleadings contained in that regard in the counter-affidavit filed on behalf of the respondents.

In the result, this writ petition is allowed, quashing Ext. P12 and directing that Ext. P10 appeal shall be heard de novo by the competent authority, after extending to the petitioner an opportunity of personal hearing in accordance with law. The facts situation obtained as on today, on the basis of the interlocutory orders issued in this writ petition will continue until the appeal is finally ordered by the Appellate Authority. The writ petitioner shall mark appearance in the office of the Secretary to Government, Department of Health and Family Welfare on 22/01/2014 at 11 a.m. so that the date of hearing can be fixed appropriately.

The Appellate Authority will endeavor to decide the appeal finally within a period of two months therefrom. No costs.