
(1987) 09 PAT CK 0034

In the Patna High Court

Case No : C.W.J.C. No's. 987, 1394 and 1395 of 1982 (R)

Jaiswal Pharmacy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 12, 18, 33

Citation : (1988) PLJR 862

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : Tapan Sen and A.K. Mehta, for the Appellant; S.B. Gadodia and Biren Poddar, C.W.J.C 987/82(R), S.K. Chat Topadbya and Arbind Kumar Jha, C.W.J.C 1394/82(R), N. Roy and I.D. Sinha, C.W.J.C. 1395/82(R), for the Respondent

Judgement

B.P. Singh, J.—In all these three writ applications the petitioners are retail dealers and distributors of drugs and medicines for sale and stock. They are registered as such and hold licences under the provisions of the Drugs and Cosmetics Act, 1940. In all these three writ applications notification bearing No. C.S.R. 779, New Delhi, dated 18th July, 1980 has been challenged whereby fee payable in respect of an application for renewal of the licence has been enhanced. There has been enhancement in the late fee also in case of applications made beyond the prescribed period. The aforesaid notification has been issued by the Central Government in exercise of the powers conferred upon it under Sections 12, 18 and 33 of the Act and rules framed thereunder. Mr. Tapan Sen, appearing on behalf of the petitions in all the three writ applications submits that in view of judgment of this Court in C.W.J.C. No. 1175 of 1982(R), dated 18th August, 1987, reported in 1988 BLJ 460 (RB) the question involved in the instant writ application is not res integra. A copy of the aforesaid judgment has been produced before me. I find that this Court has held that there was no element of quid pro quo justifying the enhancement of renewal fee and in fact no service is rendered or proposed to be rendered to the licencees. After considering a large number of authorities on the point, this Court has quashed the impugned

notification dated 18th July, 1980 and the notices issued pursuant thereto.

2. Sri S.B. Gododia, learned standing counsel appearing on behalf of the Respondents 2 to 5 namely State Drug Contractor, Bihar, Patna and other officers of the Government of Bihar, has contended that there appears to be a conflict of judicial opinion between the various judgments of the Supreme Court and hence this matter requires consideration by a larger bench of this Court. I find from the judgment of the learned Judge who quashed the impugned notification that he has followed the judgment of the Supreme Court rendered by a Constitutional Bench consisting of five learned judges of the Supreme Court. In his view, even if there be any inconsistency between two judgments of the Supreme Court, the judgment of the larger Bench ought to prevail and he has accordingly followed the judgment of the constitutional Bench of the Supreme Court. I am in respectful agreement with the principle adopted by the learned judge and I find no reason to take a different view. However Mr. Gododia contends that this matter requires consideration by a larger Bench of this Court. Even if that be so, the respondents, if they are aggrieved, may prefer an appeal under Clause 10 of the Letters Patent of the Patna High Court. That being the position no purpose would be served, and is not necessary for me to refer these writ petitions for hearing by a larger Bench. Mr. Tapan Sen, appearing on behalf of the petitioners objected to the stand taken by Sri Gadodia and contended that since the notification was issued by the Central Government, the State Government cannot challenge the judgment of this Court since it is the Central Government alone which may be aggrieved by the judgment of this Court. It is not necessary for me to go into this question since he can raise this objection before the Appellate Court if an appeal is preferred by any of the respondents.

3. In the result these writ applications are allowed. The notification bearing No. C.S.R. 779, New Delhi dated 18th July, 1980 as contained in Annexure-1 in all the writ applications is quashed. I further quash Annexure 4 in all the writ applications which are orders dated 10.2.1982, whereby the petitioners have been called upon to pay the enhanced fee and delayed fee under threat of cancellation of the licence itself, if the enhanced fee was not deposited within the prescribed period. The writ applications are accordingly allowed. There will be no order as to costs.