

(2001) 07 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 13745 of 2000

Manoj Kumar Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0021

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the prayer is to quash Memo No. 1360 dated 17.7.2000 passed by the State Drugs Controller-cum-Chief Licensing Authority, Bihar, Patna (Respondent No. 2), contained in Annexure 1, whereby and where under the wholesale drug licence of the Petitioner has been cancelled and affirmed in the appellate order dated 16.10.2000 passed by Respondent No. 1, communicated to the Petitioner vide letter dated 4.11.2000/ 31.11.2000, contained in Annexure 2.

2. It appears that after collecting sample from the shop of the Petitioner, the same was sent to the Government Analyst for test and on receipt of the said report, the impugned order of cancellation has been passed.

3. According to the case of the Petitioner, copy of the said report has not been supplied to the Petitioner which itself vitiates the impugned orders.

4. In the counter affidavit filed on behalf of the Respondent it is stated that the copy of the said report was posted on the outer door of the shop since the shop was closed.

5. Learned Counsel for the Petitioner has submitted that u/s 25 of the Drugs and Cosmetics Act, 1940, the Government Analyst to whom a sample of any drug has been submitted for test or analysis is to deliver signed report to the Inspector in triplicate in the prescribed form and under Sub-section (2) the Inspector on receipt thereof is required to deliver one copy of the said report to the person from whom the sample was taken and another copy to the person, if any, whose

name, address and other particulars have been disclosed u/s 18-A. As such, it is submitted that the Respondents were required to serve copy of the said report on the Petitioner before passing the impugned order, but they failed to comply the said requirement which will vitiate the impugned order.

6. Learned Counsel for the Petitioner relied upon the decision of the Apex Court in the case of North Bihar Agency and Others Vs. State of Bihar and Others, , in which on account of non-furnishing of the laboratory report, the Apex Court held that proper opportunity was not given to the Appellants before cancelling their licence and hence set aside the initial as well as the appellate order confirming the cancellation of licence.

7. Learned Counsel for the State, however, tried to defend the action of the authority by referring to the statement made in paragraph 6 of the counter affidavit, wherein it is simply stated that the copy of the said report was pasted on the outer door of the shop since the shop was closed. There is no statement that the Respondents ever served copy of the report on the Petitioner from whom the sample was taken. As such, in my opinion, learned Counsel for the Petitioner has rightly contended that there has been non-compliance of the requirement as provided in Section 25(2) of the said Act and the same vitiates the impugned order of cancellation.

8. The writ petition is thus, allowed and the impugned orders, contained in Annexure 1 and 2, are quashed. The Respondents are directed to proceed afresh to deal with the Petitioner in the matter of cancellation of licence after giving him proper opportunity and following the principles of natural justice.