
(2010) 05 P&H CK 0004
In the Punjab And Haryana At Chandigarh

Mansa Medicos

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Drugs and Cosmetics Rules, 1945 — Rule 58A, 66(1), 66(2)

Citation : (2010) 159 PLR 311 : (2010) 4 RCR(Civil) 136

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The short point raised in this petition filed under Articles 226 and 227 of the Constitution of India, turns on the question, whether the order passed by the Secretary, Health and Family, Punjab, exercising the powers of the Appellate Authority, Chandigarh, on 24.7.2009 (Annexure P-7), on a review application moved by the State Drugs Controller-cum-Licensing Authority, Punjab, is wholly without jurisdiction, inasmuch as the Drugs and Cosmetics Act, 1940 (for short "the Act") and the Rules framed there-under do not contain any statutory provision for review.

2. A little backdrop leading to passing of the order, Annexure P-7, sought to be quashed by the petitioner-firm, M/s Mansa Medicos, Mansa, must be noticed first. The petitioner-firm is a retailer as well as the whole-seller. The firm is holder of the licences issued under the Act and, thus, is competent to sell, stock or exhibit for sale, or distribute the drugs specified in Schedules C, C(I), and H, excluding those specified in Schedule X of the Drugs and Cosmetics Rules, 1945 (for short "the Rules"), at the designated and licensed premises. The State Drugs Controller-cum-Licensing Authority, Punjab, in exercise of powers conferred on it under Rule 66(1) of the Rules, cancelled the licences of the petitioner, both of retail as well as the whole-seller, vide order dated 22.8.2008 (Annexure P-1). The petitioner, as provided under Rule 66(2) of the Rules, preferred appeal

against the order, Annexure P-1, before the Secretary, Health and Family Welfare, Punjab (respondent No. 1). Along with the appeal, the petitioner appended various documents and synopsis to show that the medicines seized by respondent No. 3, during the course of inspection were purchased by it against valid purchase bills. The details of the sale record relevant in the context were also furnished by the petitioner. To facilitate the matter, the petitioner has placed on record a copy of the appeal and the synopsis, as Annexures P-2 and P-3, respectively. The appellate authority partly accepted the appeal vide order dated 22.9.2008, Annexure P-4, suspending the licence of the petitioner till 10.10.2008 and ordering the release of the drugs seized by respondent No. 3 during the inspection process to the petitioner, after following the proper procedure.

3. The petitioner thereafter, on the strength of the order, Annexure P-4, passed by the appellate authority, approached the District Drugs Inspector, Mansa, and moved letter dated 15.10.2008 for release of the medicines. When the medicines were not released despite several requests, the petitioner filed Civil Writ Petition No. 5087 of 2009. That writ petition was disposed of by this Court vide order dated 31.3.2009, Annexure P-5, with a direction to the State Drugs Controller-cum-Licensing Authority, Punjab, and the District Drugs Inspector, Mansa, respondent Nos. 2 and 3 herein, to take immediate action on the representations made by the petitioner for release of the seized medicines and also decide its pending claim within a period of two weeks from the receipt of certified copy of the said order.

4. It is here that the things started going wrong. According to the further averments made in the petition, the District Drugs Inspector, Mansa, respondent No. 3, with a view to thwart the rightful claim of the petitioner resorted to adopt a distinct remedy by filing an application, purportedly filed on 30.12.2008, for review of the order passed by the appellate authority, respondent No. 2. The Secretary Health and Family, Punjab, exercising the powers of the Appellate Authority, Chandigarh, vide order passed on 24.7.2009 (Annexure P-7) allowed the review application and ordered that the seized medicines could not be released at that stage.

5. It is this order which has been impugned by the petitioner in this writ petition.

6. The petitioner has challenged the impugned order on the ground that the appellate authority, i.e. respondent No. 1, while entertaining the review application, had exceeded its jurisdiction as no power of review was vested in it by any law and the observations made by the said authority in that order were totally against the spirit of the order passed by it earlier.

7. The respondents contested the petition by filing written statement. The pleas raised by the petitioner were controverted. All that was pleaded to make out a case on behalf of the respondents is that in the eventuality of an action taken under Rule 66(1) of the Rules, the stocks of seized drugs could not have been ordered to be released as there was no procedure laid down under the provisions

of the Act and the Rules and, thus, the directions given by the appellate authority in order, Annexure P-4 to that effect could not be given effect to as the same were not viable.

8. I have heard Learned Counsel for the parties and have gone through the record.

9. Learned Counsel for the petitioner submitted that the appellate authority while accepting the appeal vide order dated 22.9.2008, Annexure P-4, had ordered suspension of the licence of the petitioner till 10.10.2008 and release of the seized medicines, after following the proper procedure. According to the Counsel, the said order was subsequently reviewed by the Secretary Health and Family, Punjab, who in exercise of its powers of the Appellate Authority, Chandigarh, vide order passed on 24.7.2009 (Annexure P-7) allowed the review application and ordered that the seized medicines could not be released at that stage. Learned Counsel for the petitioner vehemently submitted that there is no provision for review of its order by the appellate authority provided under the Act or the Rules and the power of review is not inherent power as the same must be conferred by law either specifically or by necessary implication. The Counsel further went to the extent of contending that in the wake of the circumstances, referred to above, the very filing of the review application by respondent No. 3 is sheer abuse of the process of the Court. It was also contended that the order dated 22.9.2008 passed by the appellate authority in so far as it related to release of the seized drugs, was legal and valid, Learned Counsel for the petitioner in support of his submissions placed reliance on *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, and Deep Chand v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and Anr.* (1964) 66 P.L.R. 313.

10. On the other hand, Learned Counsel for the respondents, when asked by the Court to refer to the provisions of the law whereby review of the above order of the appellate authority was permissible, he could not refer to any on the basis of which, he could justify the review order i.e. Annexure P-7, passed by respondent No. 1. All that he could submit in this regard is that in view of the provisions of Rule 58-A of the Rules, the impugned order, Annexure P- 7, was totally justified. ,

11. The review is the creature of a statute. It is not an inherent power and, therefore, the same has to be specifically or by necessary implication provided under the provisions of law to enable an authority to exercise its power of review. It is not disputed in the present case that there is no specific statutory provision empowering an authority to review its own order. The Apex Court in *Patel Narshi Thakershi and Ors.*" case (supra) has laid down the principles for review, which are as under:

The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law

amounted to a review of , the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside.

12. The issue raised before a five-Judge Full Bench of this Court in Deep Chand's case (supra) was as under:

How far the Additional Director, Consolidation, was competent to recall or review his orders on the merits in the absence of any statutory provision conferring such power?

13. The Full Bench, after analysing the gamut of judicial precedents on the subject had arrived at the conclusion that power to correct apparent clerical or similar mistakes may be presumed, but only if they do not affect the substance of the decision; otherwise there can be no power of review on the merits except to the extent that the statute confers it and further held that the Additional Director of Consolidation was not empowered to recall or review his earlier erroneous and unjust order whenever it was discerned that the error was due to his own mistaken view on the merits of the controversy.

14. In view of the above, the only irresistible conclusion is that the appellate authority while passing the impugned order had exercised the power of review which did not vest in it under the law. Accordingly, the impugned order deserves to be set aside.

15. In all fairness to the Counsel for the respondent-State, it is sufficient to refer to Rule 58-A of the Rules which reads as under:

58-A. Procedure for disposal of confiscated drugs.- (1) The Court shall refer the confiscated drugs to the Inspector concerned for report as to whether they are of standard quality or contravene the provisions of the Act or the Rules in any respect.

(2) If the Inspector, on the basis of Government Analyst's report finds the confiscated drugs to be not of standard quality or to contravene any of the provisions of the Act or the rules made thereunder, he shall report to the Court accordingly. The Court shall thereupon order the destruction of the drugs. The destruction shall take place under the supervision of the Inspector in the presence of such authority, if any, as may be specified by the Court.

(3) If the Inspector finds that the confiscated drugs are of standard quality and

do not contravene the provisions of the Act or the rules made thereunder, he shall report to the Court accordingly. The Court may then order the Inspector to give the stocks of confiscated drugs to hospital or dispensary" maintained or supported by the Government or by Charitable Institutions.

16. A plain reading of the aforesaid Rule clearly shows that it does not deal with the grant of power of review to an authority under the Act or the Rules. The aforesaid provision only provides for the procedure for disposal of confiscated drugs which had been seized by the drugs authority.

17. For what has been said above, the writ petition is allowed and the order, Annexure P-7, is set aside. The respondents are directed to release the seized drugs of the petitioner in accordance with law after following the proper procedure in terms of the order dated 22.9.2008, Annexure P-4, passed by the appellate authority.