

(1996) 10 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil W.P. No. 1868 of 1996

Mehar Chand Datta

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Drugs and Cosmetics Rules, 1945 — Rule 65(9), 66

Citation : (1997) 1 ShimLC 274

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; Inder Singh, General for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—There is no merit in this writ petition. A show cause notice was issued to the Petitioner herein, under Annexure P-4 by the Assistant Drugs Controller, Himachal Pradesh. He referred to the raiding of the Petitioner's premises by the Drugs Inspector on 4-11-1995 at 2.30 p.m. It was found at that time that the Petitioner was selling Pheneedyl Cough Syrup B. No. 1137, which is a Schedule "H" drug to one Shri Vishal Sharma son of Shri N.L. Sharm a without prescription of a registered medical practitioner, which is in contravention of Rule 65(9)(a) of the Drugs and Cosmetics Rules, 1945. Apart from that certain other violations of the Rules are pointed out in the show cause notice. In the notice, the Petitioner was called upon to show cause why his retail drugs licence should not be suspended for the various contraventions mentioned in the notice. He was requested to give a reply within seven days from the receipt of the said notice. The Petitioner sent a reply under Annexure P-5, in which he denied wholesale averments contained in the show cause notice, but in paragraph 5, he stated as follows:

It is regretted to point out that the sale of Schedule "H" drugs is made without

prescription of a registered medical practitioner,

2. He has further stated in that reply that all sales are made under the direct supervision of himself and his son Sanjay Datta, who are both registered Pharmacists. According to the reply, in his absence, his son also supervises the sale and whenever both of them are out of station, the premises were kept closed.

3. There was no contention in the said reply that the sales were effected through some agent or an employee. On the other hand, the specific case of the Petitioner is that all the sales were made under his supervision or his son's supervision.

4. Under Annexure P-6, the Assistant Drugs Controller stated that the reply to show cause notice was found unsatisfactory and suspended the licence for a period of 15 days from 22-11-1995 to 6-12-1995, as the Petitioner had failed to comply with the conditions of the licence. An appeal was filed by the Petitioner to the Secretary (Health) to the Government of Himachal Pradesh. In the grounds of appeal, certain technical objections were raised invoking the provisions of Clauses (b) and (d) of the proviso to Rule 66 of the Drugs and Cosmetics Rules, 1945, but there was no reference whatever in the memorandum of appeal to the admission contained in paragraph 5 of the reply sent to the show cause notice.

5. The appeal was disposed of by the Appellate Authority by order dated 54-8-1996. The order set out the various violations of the rules caused by the Petitioner and of which the Petitioner was guilty and ultimately observed as follows:

So far as the sale and purchase of calmpose tablets are concerned, the allegation against the Appellant that he could not produce the records at the time of inspection and the same was produced later on showed the slackness on the part of the Appellant which violate the provisions of Drugs and Cosmetics Act, 1940. Documents should have been produced at the time of inspection.

It has also been observed that while maintaining the sale and purchase records the provisions of the Act are not being followed in its letter and spirit. On the basis of sale and purchase records as maintained by the Appellant, a discrepancy of calmpose tablets is admitted by him. This is also violative of the provisions of law. Arguments advanced by the Counsel for the Appellant could not satisfy the undersigned and accordingly the appeal is hereby dismissed. The operation of order dated 21-11-1995 is hereby vacated and shall be operative after 30 days of this order.

6. Aggrieved by the said order, the Petitioner has preferred this writ petition.

7. The first contention of learned Counsel for the Petitioner is that he is entitled to the benefit of Clauses (b) and (d) of proviso to Rule 66. We are unable to accept this contention in view of the fact that there was no whisper whatever in the reply to the show cause notice given by the Petitioner to the Assistant Drugs

Controller. As regards the facts, which would enable the Petitioner to invoke the said provisions of the Rules, unless the relevant facts are set out by the Petitioner before the concerned authorities it is not possible for the Petitioner to invoke the said Rules. We have pointed out already that the specific case of the Petitioner was that all the sales were effected under the direct supervision of himself or his son. Hence, the Petitioner is not entitled to the benefit of Clauses (b) and (d) of the proviso to Rule 66.

8. The second contention raised by the Petitioner is that there was only one violation of the sale of three tablets of Calmpose without a prescription of the Doctor and there was no other violation apart from that. Learned Counsel states that the records produced by him before this Court would establish the said contention. We are unable to permit the Petitioner to raise such a contention and we are not prepared to go into the records to find out whether that contention is correct or not for the following reasons.

9. We have already referred to the circumstances that the Petitioner has expressly admitted in his reply to the show cause notice that "it is regretted to point out that the sale of Schedule "H" drugs is made without prescription of a registered medical practitioner". The admission is not confined to any particular sale or any sale of particular commodity. Thus, the admission is in general terms and it will apply to all the violations, which are attributed to the Petitioner by the offence. No doubt, it has been held by the Supreme Court that the admissions can be explained by the party concerned, but in this case no attempt has been made by the Petitioner to explain the admission at any stage. No explanation of the Petitioner is found either in the memorandum of appeal before the Appellate Authority or in the application filed in this Court in this writ petition. In the absence of such an explanation, it is not open to him to go behind the admission. Hence, the view taken by the authorities on the facts is correct.

10. The last contention is that the punishment awarded to the Petitioner is too serve and disproportionate to the offence committed by him. According to learned Counsel, he is guilty of violation of the Rules only with regard to sale of three tablets of Calmpose and for such a small violation, punishment of suspension for IS days should not have been awarded. We have already pointed out that the factual contention cannot be accepted in view of the fact that there is no explanation of the admission in law, it is not possible for this Court to consider the quantum of punishment or sufficiency thereof in view of the facts found by the Appellate Authority in his order dated 24-8-1996. On these facts, we are of the opinion that the punishment awarded is quite justified and there is no warrant to interfere with the same under Article 226 of the Constitution of India. This Court is not sitting in appeal over the order passed by the Appellate Authority.

11. In such circumstances, this writ petition is dismissed.

C.M.Ps. No. 3790, 3789 and 3788 of 1996:

In view of the dismissal of the writ petition, these applications are also dismissed.