

(2024) 01 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 305, 320, 328 Of 2024

M/s. Apna Chemist And Others

APPELLANT

Vs

Assistant Commissioner (Zone-3) & Anr

RESPONDENT

Date of Decision : 10-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21, 300A
Drugs And Cosmetics Rules, 1945 — Rule 66(2)

Citation : (2024) 01 BOM CK 0047

Hon'ble Judges : G. S. Kulkarni, J; Firdosh P. Pooniwalla, J

Bench : Single Bench

Advocate : Atal Bihari Dubey, Arvind Tiwari, Rahul Mishra, Rushikesh S. Kekane, A.I. Patel, M.S. Bane

Final Decision : Disposed Of

Judgement

G.S. Kulkarni, J

1. These three petitions raise common issue of law and facts and can be conveniently disposed of by this common order.

2. The petitioners are in the business of sale of medicines. They are running medical stores for which they have obtained licences under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945. The case of the petitioners is that an inspection of their medical stores was undertaken by respondent no. 1, in pursuance of which the petitioners have been issued orders whereby the petitioners licences to conduct business in medicines, stand suspended for a particular period. Illustratively, in the first petition (i.e. Writ Petition No. 305 of 2024), licence has been suspended for the period from 8 January, 2024 to 17 January, 2024 by an order dated 3 October, 2023.

3. It is a common contention as urged on behalf of the petitioners that the petitioners have already availed of an appellate remedy as available to them under Rule 66(2) of the Drugs and Cosmetics Rules, 1945 by preferring an

appeal before the State Government. A copy of the appeal is also annexed to the petitions. Learned counsel for the petitioners in Writ Petition No. 305 of 2024 has drawn our attention to the order dated 3 October 2023 suspending the petitioners license and to a copy of the appeal annexed to the petition, which was filed on 31 October, 2023. Similarly, in the companion matters, appeals have been filed within the prescribed limitation and in fact well in advance, so that the adjudication on the appeals takes place before the period of suspension approaches.

4. Today the grievance of the petitioners before the Court, is to the effect that the Appellate Authority is neither listing the proceedings to decide the appeals nor is passing appropriate interim orders on the prayers of stay on the orders of suspension of their licence, passed by respondent no. 1. It is their contention that this has created an anomalous situation of a likely fait accompli, inasmuch as despite a statutory remedy of an appeal being provided by law, to which recourse has been taken by the petitioners, such remedy is being rendered meaningless for the reason that the appellate authority is not hearing the petitioners on the appeals and/or on the prayer for interim reliefs. It is submitted that the consequence being that the petitioners would be required to suffer the orders passed by respondent no. 1 suspending their license for the period in question, which are challenged by them in the appeal. Learned counsel for the petitioners would submit that this situation would cause irreparable prejudice to the petitioners in the event the petitioners are to ultimately succeed in their appeal.

5. On the other hand, Mr. Patel, learned AGP has submitted that the date for hearing of the appeal in so far as the petitioner in Writ Petition No. 305 of 2024 is concerned, is fixed on 11 January, 2024. This is in fact a date at the midst of the suspension period and which would bring about a situation that the petitioner would be required to suffer suspension, in the event the impugned order is not stayed. Insofar as the other petitioners are concerned, the suspension would take effect from 11 January, 2024.

6. Having heard learned Counsel for the parties and having perused the record, in the facts and circumstances of the case, we find much substance in the contentions as urged on behalf of the petitioners. The petitioners in the present case are aggrieved by the orders passed by respondent no. 1 suspending their licence as noted above. They have taken recourse to a statutory remedy as available to them under the rules by filing their respective appeals with the Appellate Authority/State Government. Such appeals are in fact filed well in advance with an intention that the appeals are decided prior to the period of suspension of their licence as ordered by respondent no. 1. The intention of the petitioners being that in the facts and circumstances of their respective case, they ought not to suffer an unwarranted suspension. Thus, the concern of the petitioners is that the remedy of an appeal as provided under the rules should not be rendered otiose, so as to bring about a situation, that after the suspension

period is over, the proceedings are thereafter decided, which would cause a serious prejudice to the petitioners. We are quite in agreement with the petitioners. In such circumstances, there cannot be a scope for a theory of "operation being successful however the patient dead". The petitioners would certainly have a legal right to know, the status of their challenge insofar as the interim reliefs or the final reliefs they seek in their appeals, before they are made to suffer the suspension order. We would also observe that in the circumstances as in the present proceedings, the non passing of an appropriate order (interim or final), would also have a direct bearing on the rights of the petitioner to carry on trade, occupation/business. This in as much as, such inaction on the part of the appellate authority is likely to affect the rights guaranteed to such persons under Article 19(1)(g) of the Constitution read with Articles 14, 21 and 300A of the Constitution. The appellate authority is thus expected not to overlook such significant obligation in relation to the powers the appellate authority wields, in adjudication of the statutory appeals. Once the remedy is provided by law, it is required to be an "effective remedy" in letter and spirit. The appellate authority hearing the statutory appeals would be required to be alive to the consequences, an order subject matter of the appeal would bring about qua the appellant before it.

7. In the aforesaid circumstances, we are of the clear opinion that the petitioners ought to be granted a protection till the appellate authority takes up the appeal and decides the same.

8. We, accordingly, dispose of the petitions by the following order:

ORDER

(i) The appellate authority is directed to hear the petitioners pending appeals and/or stay applications as expeditiously as possible and in any event within a period of eight weeks from the date, a copy of this order is presented before the appellate authority.

(ii) Needless to observe that if the appeals are fixed for hearing, in the immediate future, the same be taken up and decided as per the schedule for hearing so fixed.

(iii) Till the appeals/stay applications are decided, the orders suspending petitioner's licences, subject matter of challenge in the appeals, shall remain stayed.

(iv) Needless to observe that in the event the petitioners fail in their appeals, certainly it would be within the powers and authority of the appellate authority to modify the period of suspension and impose a future period of suspension on the petitioners.

(v) All contentions of the parties on the pending appeals are expressly kept open.

9. Disposed of in the above terms. No costs.