

(2020) 04 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5608 Of 2020

M/S Fantasy Drugs Private Limited

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-04-2020

Acts Referred:

Citation : (2020) 04 PAT CK 0005

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Rashid Izhar, Vikash Kumar

Final Decision : Disposed Of

Judgement

1. The instant writ petition having been filed through email and found extremely urgent by Hon'ble the Chief Justice has been posted before me under his orders for hearing via video conferencing.

2. Though, certain defects have been pointed out by the Stamp Reporter in the writ petition, learned counsel for the petitioner has given an undertaking that he shall remove all the defects after lockdown limitation comes to an end. Learned counsel for the State has also raised no objections for hearing the matter on merits ignoring the defects. Thus, with the consent of the parties, the matter has been taken up for hearing on merits.

3. Heard Mr. Rashid Izhar, learned counsel for the petitioner and Mr. Vikash Kumar, learned Standing Counsel No.11 for the State.

4. The reliefs prayed for in the writ petition in para 1 read as under:-

"I. Issuance of a writ or writs in the nature of Mandamus commanding the Respondents Nos. 2 to 4 & 6 not to withhold the due allotment of Ethanol (base ingredient of Hand Sanitizer) to the Licensee Petitioner Company from the Government Depot for manufacturing Hand Sanitizers as per the urgently granted Drug Manufacturing License to tackle the emergency situation of Corona

Virus Pandemic (COVID - 19), when the similarly situated M/s. Globus Spirits Limited Company (Distillery Company) is favourably allotted Ethanol on privilege basis for industrial purpose and denial of allotment of Ethanol to the 3 Petitioner is putting the life of citizens of Bihar at stake and also infringing upon the valuable rights of the Petitioner Company.

II. For issuance of Writ or Writs commanding the Respondents Nos. 2 to 4 & 6 to immediately release the routine allotment of Ethanol from the Government Depot in favour of the Petitioner as non allotment of Ethanol deny the urgent requirement of manufacturing of Hand Sanitizer by the Company on the basis of urgently granted license by Respondent No. 5 in favour of the petitioner Company having capacity to produce 1,50,000 Sanitizer Bottles each day to fulfill the public demand in the medicine market of Bihar as well as Government requirements in tackling COVID - 19 Pandemic.

III. For issuance of direction to the Respondent Excise Department not to favour its chosen Distillery Company and discriminate the Drug Manufacturing Company having license under the Drug and Cosmetic Act and its Rules when the petitioner Company is the only licensee in Bihar to produce Hand Sanitizer in 50 ML Bottle, 100 ML Bottle, 500 ML Bottle, 01 Ltr. Bottle and 05 Ltr. Bottles.

IV. Grant such other relief or reliefs to which the petitioner may be entitled in the facts and circumstances of this case."

5. The petitioner is a company registered under the Indian Companies Act, 1956.

6. The case of the petitioner is that it is a fully functional large-scale manufacturing establishment having capacity to produce large scale Biological and Non-Biological Drugs. It has a completely automated manufacturing unit having capacity to produce one lakh fifty thousand bottles of medicine each day. It holds a valid drug manufacturing license for manufacturing of Biological Drugs and Non-Biological Drugs bearing License No. BR-98(N)AL/16 (for Biological Drug) and License No. BR-99(N)AL/16 (for Non-Biological Drug) both dated 07.06.2016.

7. The further case of the petitioner is that the production of Hand Sanitizers (70% Ethanol) can be made only through a license under Drugs and Cosmetics Act, 1940 and its Rules, 1945.

8. In the State of Bihar, there was no manufacturing company for manufacturing of Hand Sanitizers till the month of March, 2020. The petitioner was also not involved in the production of Hand Sanitizers until then.

9. However, due to the outbreak of COVID-19 Pandemic, the Government of India issued a communication dated 17.03.2020 to all States / Union Territories Drug Controllers for monitoring of the quality standards and availability of Hand Sanitizers within their jurisdiction. It was further directed that the grant of license for manufacturing and processing of application for manufacturing of Hand Sanitizers be expedited by taking proactive measures to meet the

challenges of the outbreak and the increased demand.

10. With the demand for Hand Sanitizers increasing manifold and its shortage across India, the Government of India through the Directorate General of Health Services, Central Drugs Standard Control Organization once again issued request vide letter dated 18.03.2020 to the Drug Licensing Authority of respective States to process on priority the grant of manufacturing licenses to the applicants within three days of application for manufacturing of Hand Sanitizers on high priority and in public interest.

11. Realizing the shortage of Hand Sanitizers faced by the State of Bihar, the petitioner felt a need to obtain license for manufacturing of Hand Sanitizers (70% Ethanol) in terms of the letter issued by the Government of India through the Directorate General of Health Services, Central Drugs Standard Control Organization vide letter dated 18.03.2020, as contained in Annexure-3 to the writ petition and as such it submitted an application alongwith requisite Challan before the Directorate Drug Control Administration, Bihar, Patna on 23.03.2020, for grant of additional manufacturing license for production of Hand Sanitizers having its generic name - Ethanol IP 70%, Hydrogen Peroxide IP and Glycerol IP in the packing size of 50 ML., 100 ML., 500 ML., 1 Ltr. and 5 Ltr.

12. The inspection of the manufacturing unit of the petitioner was conducted on 25.03.2020 by the competent officials and being satisfied with its infrastructure and production capability, additional Product License dated 26.03.2020 was granted to the petitioner against the existing drug manufacturing license bearing License No. BR-99 (N)AL/16 (Non Biological) under the Drugs and Cosmetics Act, 1940 and its Rules, 1945.

13. Earlier no company in the State of Bihar was having any manufacturing license for Hand Sanitizers. The petitioner alongwith another applicant, namely, M/s. Globus Spirits Limited (A Distillery Company) were the first two companies in the State of Bihar, which were granted license to produce Hand Sanitizers simultaneously vide respective notifications dated 26.03.2020.

14. After grant of manufacturing license on 26.03.2020, the petitioner filed an application before the competent authority of Excise Department (respondent No. 2 through respondent No. 6) on 27.03.2020 for allotment of Ethanol from the Government Depot and the application of the petitioner was submitted in the office of respondent no. 6. The same was submitted by the respondent no. 6 in the office of respondent nos. 2 to 4 on 28.03.2020. The application of the petitioner dated 27.03.2020 was duly processed in the office of respondent nos. 3 and 4 on 28.03.2020, but the same awaited final permission at the end of respondent nos. 2 to 4.

15. Thereafter, the an application was submitted by the petitioner on 30.03.2020 in the Office of the Chief Secretary, Government of Bihar with the intervention of Bihar Industries Association, Patna with a hope of a positive action for allotment, but the same could not fetch any result.

16. The further case of the petitioner is that its Director made efforts to personally meet the respondent nos. 2 to 4 in the Secretariat, Patna and made telephonic conversation with respondent no. 4 many a times for an early decision on the allotment of Ethanol, but without any response. The representative of the petitioner visited the office of respondent nos. 2 to 4 on 08.04.2020 for grant of allotment of Ethanol from the Bihar Government Depot, but the said effort also went in vain.

17. Thereafter, the petitioner submitted a further request vide e-mail dated 09.04.2020 to the respondent nos. 2 to 4 and 6 for allotment of Ethanol, but the same also did not yield any result.

18. Regard being had to the inaction on part of the respondent nos. 2 to 4 and 6, the petitioner submitted a reminder letter on 11.04.2020 before the respondent no. 6 addressed in the name of respondent no. 2 for proper and early decision for allotment of Ethanol from the Excise Department Depot, but till date no decision has been taken on its representation.

19. Mr. Rashid Izhar, learned counsel for the petitioner submitted that the casual approach and inaction on the part of the respondent nos. 2 to 4 and 6 is a deliberate act to favour one licensee M/s. Globus Spirits Limited for production of Hand Sanitizers. He contended that non-allotment of Ethanol in favour of the petitioner is discriminatory on the part of the respondents as they have already granted allotment to a similarly situated entity of M/s. Globus Spirits Limited.

20. He submitted that the respondents have failed to treat two similarly situated entities similarly. They have favoured M/s. Globus Spirits Limited giving a monopolistic right in its favour and at the same time have denied the allotment in favour of the petitioner without there being any rationale to do so.

21. Mr. Vikash Kumar, learned Standing Counsel No.11 appearing on behalf of the respondent State submitted that the contention of the petitioner that the respondents have failed to treat two similarly situated entities at par is not correct. He contended that though the State has not filed its counter affidavit as the copy of the petition was recently served upon it, the respondent authorities are acting fairly and impartially considering the merits of the representations, being filed for the allotment of Ethanol for the purpose of manufacturing of Hand Sanitizers. He contended that the application of the petitioner maybe either wanting on merits or the same may not have been disposed of as the respondents maybe too busy in their official discharge of duty in fighting with the outbreak of COVID-19. He further contended that there is no deliberate inaction or delay on the part of the respondents in disposal of the application of the petitioner for allotment of Ethanol.

22. He contended that the writ petition may be disposed of with a direction to the respondent authorities to dispose of the representation of the petitioner filed on 27.03.2020 on merits expeditiously.

23. This Court takes judicial notice of the fact that the demand of Hand Sanitizers is increasing day by day and there is shortage of Hand Sanitizers across India. Having realized the sensitivity of the matter, the Government of India has also directed all States and Union Territories to monitor and keep restrictions in allotment of Ethanol to the manufacturers. The Ministry of Consumer Affairs, Food & Public Distribution Department of Food and Public Distribution in a letter to the Chief Secretaries and Administrators of all States and Union Territories said that necessary permissions on account of licensing and storage of Ethyl Alcohol/ Extra Neutral Alcohol (ENA)/ Ethanol may be accorded by the State Government Agencies to the sanitizer companies upto their installed capacity without any quota restriction on supply.

24. The Ministry has also said that all possible arrangements should be made to ensure Ethyl Alcohol / ENA/ Ethanol is made easily available to the sanitizer industry. The Ministry has also asked the State and the Union Territories to expedite necessary permissions to encourage the sanitizer industry to enhance their production capacity. The Ministry has also said that sanitizer industry operating in the States/Union Territories should be motivated to run their units in all three shifts, so that they can utilize their installed capacity to produce maximum quantity of hand sanitizers.

25. The Public health agencies including the World Health Organization (WHO) have been advising the public to maintain personal hygiene that includes the use of sanitizers and disinfectants to prevent the spread of infection of COVID-19.

26. On the facts and in the circumstances of the case, any delay in disposal of the application of the petitioner for allotment of Ethanol for manufacturing of Hand Sanitizers would not be in the interest of either the State or the public at large.

27. In that view of the matter, with the consent of the parties, the writ petition is disposed of with a direction to the respondent no.3, the Commissioner, Prohibition, Excise & Registration Department, Government of Bihar, Patna to dispose of the representation of the petitioner dated 27.03.2020 submitted in the office of the respondent no.6 and its subsequent reminders submitted to various respondents noted hereinabove for allotment of Ethanol in accordance with law by a reasoned and speaking order, as early as possible and latest by 21.04.2020. The respondent no.3 shall be required to transmit a copy of the order passed by him to the petitioner forthwith via email on his email address, which the petitioner undertakes to provide to respondent no.2 latest by 20.04.2020.

28. The learned Registrar General, Patna High Court is directed to ensure that a copy of this order is communicated to the learned counsel for the petitioner, learned counsel for the State and the respondent no.3 on their respective email address by tomorrow, i.e. 19.04.2020.