

(2011) 08 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11804 of 2010 (O and M)

M/s Garg Medical Hall

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18A
Drugs and Cosmetics Rules, 1945 — Rule 66
Indian Medical Council Act, 1956 — Section 15
Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 164 PLR 785 : (2012) 2 RCR(Civil) 9

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The petitioner, who is a licensed Pharmacist is before this Court, challenging the order cancelling his licence. This action follows three episodes of surprise checks made at the petitioner's shop. The first inspection was conducted on 05.06.2006, for which, a show cause notice was issued on 17.10.2006; the second inspection on 10.05.2007 in respect of which, show cause notice was issued on 29.01.2008; and the third inspection had made on 02.12.2008, for which, a show cause notice was issued on 08.04.2009. After the first inspection, the show cause notice recorded an observation that the petitioner was unable to produce the purchase bills of several medicines and that the bill books were not correct. In respect of the second inspection which was surprise inspection made on 10.05.2007, the show cause notice sought to elicit how the petitioner was keeping 9 types of narcotic drugs that had been seized at the time of inspection without appropriate purchase bills for the same. The contention by the State was that there had been no reply, though the petitioner contended that a reply had been given on 28.02.2008. This, it is stated by the counsel for the State to be merely a fabrication since there was also a reminder given by the State and there was no response for the reminder for non-issue of reply to the show cause notice. Consequently, a decision had also been taken to

suspend the licence for 10 days. On the third occasion on 02.12.2008 when the inspection was undertaken, it was again found that there were 15 habit forming drugs which had been stored at the shop without purchase bills. In the explanation given by the petitioner along with certain documents, the petitioner placed reliance of certain purchases from Navi Medical Agency. The learned counsel for the State would point out that the bills were clear fabrication which would be evident from the fact that Navi Medical Agency had been closed on the date when the bills were said to have been issued in the name of the petitioner-shop. The decision to cancel the licence although might seem harsh, the learned counsel for the State would support the decision by the fact that there were three consecutive occasions when the petitioner was seen to be clearly in breach of the licence conditions and most importantly the petitioner was seen to be stocking narcotic substances without appropriate purchase bills for the same.

2. The learned counsel for the petitioner would contend that there has been a persistent attempt on the part of the officials of the 2nd respondent to harass him and in a case, which was registered soon after the second surprise inspection on 10.05.2007, an FIR No.66, dated 10.05.2007, had been registered, but when the case was brought before the Sub Divisional Judicial Magistrate, Talwandi Sabo, he discharged the petitioner of the charges levied against him u/s 18-A of the Drugs and Cosmetics Act, 1940 read with Section 15 of Indian Medical Council Act of 1956 and u/s 420 IPC. The petitioner had also approached this Court earlier for some grievance against the respondents when this Court had passed an order in CWP No.14431 of 2006 to permit the petitioner to reopen the shop.

3. It is no doubt true that any violation under the Drugs and Cosmetics Act, 1940 as regards the materials collected at the shop especially for possession of narcotic drugs, without bills is a serious violation. The learned counsel for the petitioner states that he is running a shop in a small village where he caters to the needs of the villagers and will be completely ruined if the business is stopped and would put to great hardship. The learned counsel would rely on the power available with the authority to suspend or cancel the licence in part. He would plead that, having regard to the extreme hardship of what would entail, if the licence were to be cancelled, he would plead for a partial cancellation of licence in respect of the goods specified in Schedule-H that would include the licence to store narcotic drugs for medicinal purposes. Having regard to the fact that there have been some minor irritants between the petitioner and the authorities of the 2nd respondent, the petitioner probably has a justifiable reason to think that he is being treated unfairly by the authorities. I am not prepared to find that the decision to cancel the licence was wholly wrong, but there definitely exists some extenuating circumstance, namely, that the shop is in a village and the petitioner is a Small time chemist carrying on trade for several years without any complaint except in the last two years when there have been surprise checks and collection of evidence which gave rise to the cancellation of the licence. Since the power to cancel the licence in part does exist under Rule 66 of the Drugs and Cosmetics

Rules, I would think that interest of justice would be met if the cancellation of licence that has been made, is modified to operate for storing of Schedule-H drugs only. The petitioner is prepared to give an undertaking that he shall not keep any medicines/drugs that are set out in Schedule-H. Such an undertaking and a restriction of a licence without a permission to keep Schedule-H drugs would sufficiently secure what is intended to be achieved by the cancellation of licence. The possession of any Scheduled drugs in the shop without a licence would itself lead to other offences under Narcotic Drugs and Psychotropic Substances (NDPS) Act and that ought to be a sufficient deterrent for the petitioner to indulge in any activity that is in conflict with law.

4. The order of cancellation of licence is modified to provide for an issuance of licence for storing drugs, other than drugs mentioned in Schedule-H of the Drugs and Cosmetic Act of 1940. The 2nd respondent shall issue suitable orders making such restrictions and setting such conditions as may become necessary and he would also be entitled to secure from the petitioner an undertaking which was made before this Court by the petitioner through his counsel. On receipt of such an undertaking from the petitioner, the 2nd respondent will consider issuance of a fresh licence within two weeks from the receipt of such an undertaking from the petitioner.

5. The impugned order stands modified and the writ petition is disposed of as above.