

(2020) 09 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 25124 Of 2019

M/S Kankanady Homeo Hall

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 188, 276
Drugs And Cosmetics Rules, 1945 — Rule 106B

Citation : (2020) 09 PAT CK 0057

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Dhananjay Kumar, Ramadhar Singh

Final Decision : Allowed

Judgement

The present writ petition has been filed for quashing the order dated 28.06.2019, passed by the Assistant Drug Controller, Vaishali at Hajipur, whereby and whereunder the license of the petitioner has been cancelled. The petitioner has further challenged the appellate order dated 04.10.2019 passed by the appellate authority-cum-Principal Secretary, Health Department, Government of Bihar, Patna.

The brief facts of the case are that the petitioner is a Homeopathy medicine shop which was granted license by the respondents in the year 2010 and the same has been renewed from time to time. A raid is said to have been conducted in the shop of the petitioner by the inspection team on 16.05.2019 and an inspection report was prepared whereafter a show cause notice dated 17.05.2019 was issued to the petitioner Homeo Hall by the Assistant Drug Controller, Vaishali at Hajipur, wherein the petitioner was called upon to submit his show cause reply regarding seizure of medicine namely Wheezal (Dilution Hepar Sulph. 200) containing 91% v/v of alcohol, pack size being 450 ml., of which no bill was produced and was not in accordance with the provisions contained in Rule 106B of the Drugs & Cosmetics Rules, 1945. In the said show

cause notice dated 17.05.2019, it was further mentioned that at the time of inspection no competent person of the Homeo Hall was present. The petitioner is stated to have submitted his reply dated 29.05.2019 wherein it was explained that at the time when the medicine in question was purchased, there was no ban. It was also stated that the petitioner had handed over the bill to the inspecting team at the time of inspection. Lastly, it was submitted in the show cause reply that the said medicine in question was an old stock and the remaining five bottles of the said medicine had been kept on the third floor of the shop in one corner awaiting the representative of the company/manufacturer of the said medicine to pay compensation and destroy the same. It appears that thereafter, the Assistant Drug Controller, Vaishali at Hajipur, by the impugned order dated 28.6.2019 has cancelled the license of the petitioner shop, finding the show cause reply of the petitioner to be unsatisfactory. The petitioner had then challenged the said order dated 28.06.2019 before the appellate authority which has also been dismissed vide the impugned order dated 04.10.2019.

The learned counsel for the petitioner has submitted that the criminal prosecution launched by the prosecution by way of Hajipur P.S. Case No. 451 of 2019, registered under Sections 276 and 188 of the Indian Penal Code as also Rule 106B of the Drugs & Cosmetics, as against the petitioner herein, has been quashed by a coordinate Bench of this Court vide order dated 21.10.2019 passed in CrI.W.J.C. No. 1437 of 2019, hence it is submitted that the very basis for issuing show cause to the petitioner and passing of the impugned orders dated 28.06.2019 and 04.10.2019, no longer subsist, hence the impugned orders are fit to be set aside. It is further submitted that in any view of the matter the punishment of cancellation of license is not commensurate to the allegations leveled against the petitioner, hence on this score as well the impugned orders are fit to be quashed.

Per contra, the learned counsel for the respondent-State has submitted that neither there is any error in the decision making process nor there is any infirmity in the impugned orders dated 28.06.2019 and 04.10.2019, hence the present writ petition is fit to be dismissed.

I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that at the time of inspection two discrepancies were found as far as the petitioner shop is concerned i.e. (i) Recovery of five bottles (450 ml. each) of Wheezal (Dilution Hepar Sulph. 200), containing 91% V/V alcohol; and (ii) Non presence of competent person in the shop at the time of inspection. As far as recovery of Wheezal (Dilution Hepar Sulph. 200) is concerned, the respondents in the impugned orders dated 28.06.2019 and 04.10.2019 have nowhere stated that the sample of the said drug, which was seized from the petitioner shop has been tested in a laboratory and it has been found conclusively that the said medicine contains more than 12% alcohol, hence this Court finds that the petitioner could not have been punished on this score inasmuch as the said allegation of seizure of Wheezal (Dilution Hepar Sulph.

200) from the petitioner shop, containing alcohol to the tune of 91 % v/v has not stood substantiated/corroborated by any report of the laboratory and moreover the criminal prosecution has also stood quashed, hence imposition of punishment of cancellation of license on the petitioner on a hypothetical basis cannot stand the scrutiny of law and is thus vitiated.

As far as the allegation of non-presence of a competent person in the petitioner shop at the time of inspection is concerned, this Court is of the view that the said one time momentary lapse is not such a grave violation that would entail cancellation of license, meaning thereby that the impugned decision of the respondent authorities of cancelling the license of the shop of the petitioner is disproportionate to the gravity of the offences alleged. Reference in this connection be had to the celebrated judgment of R. vs. Barnsley Metropolitan Borough Council, reported in (1976) 3 All England Report, page 452 wherein a market trader was deprived of his trader's license for urinating in a side street and the Court of Appeal, had quashed the said decision on various grounds but had further observed that the punishment imposed was altogether excessive and out of proportion to the occasion, and should be quashed on this ground as well.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I find the impugned orders dated 28.06.2019, passed by the Assistant Drug Controller, Vaishali at Hajipur and the one dated 04.10.2019, passed by the appellate authority-cum-Principal Secretary, Health Department, Government of Bihar, Patna to be unsustainable in the eyes of law, hence are quashed.

The writ petition stands allowed.