
(2011) 05 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8221 of 2011

M/s Mahalaxmi Medicos

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Drugs and Cosmetics Act, 1940 — Section 26A
Drugs and Cosmetics Rules, 1945 — Rule 59, 61, 62, 62A, 63

Citation : (2011) 163 PLR 384

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts, which heeds a necessary mention for a limited purpose of deciding the core controversy involved in the instant writ petition and emanating from the record, is that the shop of petitioner-Firm-M/s Mahalaxmi Medicos(for brevity "the petitioner-Firm") was inspected on 11.04.2009 by the District Drugs Inspector, Jalandhar. During the course of inspection, some glaring violations of The Drugs and Cosmetics Act, 1940 and Rules, 1945 (hereinafter to be referred as "the Act/Relevant Rules") were noticed. A show cause notice was issued to him vide letter bearing No. 12491 dated 27.07.2009 in terms of Rule 66(1) of the Relevant Rules, but the petitioner-Firm did not send any reply in this regard.

2. Having completed all the codal formalities, the competent-Licensing Authority suspended its license for a period of 30 days and in addition to it, the stocking and sale of drugs containing specific salt(mentioned therein) were restricted vide impugned order dated 08.12.2010(Annexure P-8).

3. The petitioner did not feel satisfied and preferred the present writ petition, challenging the impugned order(Annexure P-8), invoking the provisions of Articles 226/227 of the Constitution of India.

4. After hearing the learned counsel for the petitioner, going through the record with his valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant writ petition in this context

5. As is evident from the record that during the course of the inspection of the petitioner-Firm, some glaring contraventions of the Act and the Rules (mentioned therein the show cause notice issued to the petitioner-Firm) were noticed, but it did not file any reply. Thereafter, the competent/Licensing Authority suspended its license for a period of 30 days and restricted stocking and sale of drugs, containing particular salts mentioned therein, by virtue of impugned order (Annexure P-8), the operative part of which is, as under:

During the inspection made on 11.04.2009, your firm has not shown the purchase records of 21 types of drugs seized on Form 16, from which it is clear that your firm has contravened the provisions of Rules 65(5)(3) and 65(6) of the Drugs and Cosmetics Rules, 1945. During the inspection made on 11.04.2009, your firm has not shown the sale records of the said drugs as a result thereof your firm has contravened the provisions of Rules 65(5)(1) and 65(6) of the Drugs and Cosmetics Rules, 1945. For this reason, your wholesale drugs licenses bearing Drugs Licenses No. 20299-OW and 20097-W are suspended for a period of 30 days from the receipt of this order in terms of Rule 66(1). In addition to it, for the Contraventions made by you the stocking and sale of the drugs containing salts Dextropropoxyphene, Codeine, Dyphenoxylate, Nitrazepam, Buprenorphine and Pentazocine or any drug containing any of these salts are restricted under your wholesale drugs licenses. So from the date of the receipt of this order, the stock of these medicines shall not be kept and nor any sale of the drugs containing any of these salts shall be made. You are directed that the original licenses of your firm (Form 20-B and 21-B) should be sent immediately to this office so that the necessary entries in respect of the restriction and suspension can be made thereon.

6. Ex facie, the argument of the learned counsel mat since the Central Government has the power to prohibit manufacture, sale or distribution of such drugs u/s 26-A of the Act and the Licensing Authority did not have the jurisdiction in this respect, so, the impugned order is illegal, is not only devoid of merit but misplaced as well.

7. Sequelly, there can hardly be any dispute with regard to the crux of the observations of the Hon"ble Apex Court in case titled as Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, , that unnecessary restrictions cannot be placed on the trade of an individual, but the same would not come to the rescue of the petitioner-Firm in the present controversy, as the Licensing Authority has only restricted stocking and sale of the indicated drugs on account of violation of the terms & conditions of the license.

8. As is clear that Rule 26A of the Act postulates that without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied,

that the use of any drug or cosmetic is likely to involve any risk to any human beings or animals or that any drug does not have the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and¹ that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate, restrict or prohibit the manufacture, sale or distribution of such drug or cosmetic. But, to me, this provision is not at all applicable, in any manner, in the case Of the contraventions of the provision of the Act/Rules and violations of the terms and conditions of the license granted under the Act/Rules, as in the instant case.

9. It is not a matter of dispute that the State Government has appointed the Licensing Authorities to carry out the purpose of the Act Under Rule 59 of the Relevant Rules, to issue licenses as per Rules 61, 62 and 62-A and after being satisfied the conditions contained under Rules. 62 to 64. Rule 65 of the Relevant Rules posits the conditions of the licenses and additional information is required to be furnished by an applicant under Rule 65-A.

10. Likewise, Rule 66 of the Relevant Rules envisaged that the Licensing Authority may, after giving the licensee an opportunity to show cause, why such an order should not be passed by an order in writing stating the reasons therefore, cancel a license issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the license or with any provisions of the Act or Rules thereunder.

11. As, the complete procedure for cancellation/suspension of the license for contravention of the provisions of the Act & Rules and violation of terms and conditions of the license, is provided under Rule 66, therefore, the provisions of Rule 26-A of the Act, would not be applicable in this context, as urged on behalf of the petitioner-Firm.

12. To my mind, the provisions of Section 26-A of the Act would only be attracted in the event of manufacture, sale or distribution of such drugs, the use of which is likely to involve any risk to human beings (dangerous drugs) and other conditions depicted therein and not otherwise.

13. Therefore, a conjoint reading of these provisions would reveal that if any person manufactures, sells or distributes such dangerous drugs mentioned therein, then action can be taken against the erring persons u/s 26-A of the Act. But if any person contravenes the provisions of the Act/Rules or violates the terms and conditions of the license, in that eventuality, the competent/Licensing Authority only has the power to suspend the license, and to restrict the stocking and sale of any particular drugs, as has been so restricted in the instant case.

14. In this manner, to me, the scope and regime of Section 26-A of the Act is entirely different than that of the purview and field of Rule 66 of the Relevant Rules in this relevant, connection. Hence, the contrary arguments of the learned

counsel for the petitioner-Firm "stricto-sensu" deserve to be and are hereby repelled under the present set of circumstances.

15. This matter can be viewed from a different angle. The competent/Licensing Authority issued show cause notice for the indicated contravention of the Act and violations of the terms & conditions of the license, but instead of filing the reply and explaining its case, for the reasons best known to it, the petitioner-Firm has straightway jumped to file the instant writ petition, challenging the impugned order(Annexure P-8). To me, the competent/Licensing Authority was well within its jurisdiction and has rightly passed the impugned order. Such order, containing the valid reasons, cannot legally be set aside, in exercise of writ jurisdiction of this Court, unless the same is perverse and without jurisdiction. As, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner-Firm, therefore, the impugned order (Annexure P-8) is hereby maintained in the obtaining circumstances of the case.

16. In the light of aforesaid reasons, as there is no merit, therefore, the present writ petition is hereby dismissed as such.