

(2013) 10 AP CK 0106

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14788 of 2013

M/s. Mallikarjuna Medical @ General Stores

APPELLANT

Vs

Assistant Director, Sales Licensing and Enforcement
Authority, Assistant Director, Drugs Control Administration
District, Drugs Inspector (FAC), Kamareddy and Drug
Inspector Nizamabad, Drug Control Administration

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 1 ALD 775 : (2014) 2 ALT 309

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : S. Bhooma Goud, for the Appellant;

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—The petitioner, a partnership firm carrying on business in sale of drugs and cosmetics, instituted this writ petition mounting a challenge to the order passed on 12.04.2013 by the Assistant Director, Sales Licensing and Enforcement Authority, Drugs Control Administration at Nizamabad, canceling the license granted to it earlier, for the violation of the conditions of license indulged in by the petitioner firm. The managing partner of the petitioner firm filed an affidavit in support of this writ petition. It is stated that the petitioner firm was carrying on business in sale of drugs and pharmaceuticals at Bibipet, Domakonda Mandal, Nizamabad District. In paragraph 4 of the said affidavit, it is averred that a show-cause notice in proceedings Rc. No. 73/AD/NZB/2013 dated 01.03.2013 was issued requiring the petitioner to submit the explanation through the Drugs Inspector within a period of seven days from the date of receipt of the said notice and that it was proposed in the said show-cause notice to suspend/cancel the license granted to the petitioner for the violation indulged in by the petitioner firm. It is further asserted that a detailed explanation was submitted on 12.03.2013 through the

Drugs Inspector, Kamareddy, specifically asserting therein that the petitioner is not aware of any seizure of drugs from the premises bearing H. No. 15-13, Bibipet and that the petitioner is not concerned with the alleged drugs seized as the petitioner has no connection with the said premises bearing H. No. 15-13, Bibipet. But however, without even examining the said explanation, the Assistant Director, Sales, Licensing and Enforcement Authority of the Drugs Control Administration, Nizamabad passed orders on 12.04.2013 cancelling the drugs license of the petitioner firm which was run in the name of M/s. Mallikarjuna Medical and General Stores, D. No. 10-72, Bibipet, Domakonda Mandal, Nizamabad. It is alleged in the order of cancellation dated 12.04.2013 that the Drugs Inspector, Nizamabad inspected the medical shop on 23.02.2013 and drew up an Inspection Report and that a show cause notice was issued to the petitioner firm, but the petitioner has not shown any cause by submitting explanation and that the petitioner has stocked for sale, certain drugs labeled as physician samples not to be sold, in an unlicensed go-down at premises bearing D. No. 15-13, Bibipet and hence the drugs license of the petitioner firm has been cancelled. It is the case of the petitioner that the cancellation order is passed without assigning any specific or valid reasons and that the cancellation order is vague and ambiguous. In paragraph 5 of the affidavit filed in support of this writ petition, it is specifically asserted by the petitioner as under:

It is not specifically stated that what are the physician samples found and what are the drugs meant to be sold without having valid drug licenses for the go-down premises.

2. It is the further case of the petitioner that the explanation submitted by the petitioner through the Drug Inspector, Kamareddy has not even been looked into or taken into consideration and hence the order of cancellation, passed by the first respondent, of the license of the petitioner is in violation of the principles of natural justice. Hence this writ petition.

3. The Drugs Inspector, Kamareddy, Nizamabad District has filed a detailed counter affidavit in the matter and also enclosed copies of several documents as material papers. It is asserted in the counter affidavit that, the Drugs Inspector, Nizamabad, the fourth respondent conducted a surprise inspection at the go-down of the petitioner firm situate at D. No. 15-13, Main Road, Bibipet Village, Domakonda Mandal, Nizamabad District on 23.02.2013 at 5.00 P.M. and sealed the lock applied to the main door of the said go-down. Thereafter, the next day i.e on 24.02.2013, in the presence of the Assistant Director, Sales Licensing and Enforcement Authority, Drugs Control Administration, Nizamabad and in the presence of Sri K. Veresham and Sri E. Prasad and in the presence of the mediators, removed the seal applied to the lock of the front door of the go-down on the previous day and got opened the lock and the door of the go-down. During the inspection of the material stored therein, several drugs and pharmaceuticals meant and stamped as physician samples not to be sold were found stored in the said go-down premises. When it is ascertained as to the

reasons why these drugs and pharmaceuticals were stored in the said premises, it was replied by Sri K. Veresham, Managing Partner of the petitioner firm that, as there was not adequate space available at the medical shop, they were all stored at the go-down hired by them. When the partners of the petitioner firm were asked to explain the sources for securing such huge quantities of physician samples, they have replied that those physician samples were purchased from the medical representatives, without medical bills and hence they were also stored in the go-down. Since the go-down premises did not have a license and since certain material which should not have been stocked for sale has been stored there, all that material that was stored in the go-down premises has been seized duly entering all the details of the material so seized in Form No. 16. Most importantly, it was asserted in the counter affidavit in paragraph 2 as under:

A copy of the Form No. 16 has been served on Sri Kasetty Veeresam and obtained acknowledgment. Therefore, the petitioner violated the above said rules and also stored drugs in the unlicensed premises, thereby violated 18(C) of the Drugs and Cosmetics Act, 1940.

4. It is important to notice that the petitioner has not denied or disputed the factual statements made in the counter affidavit.

5. Heard Sri S. Bhuma Goud, learned counsel for the petitioner and the learned Government Pleader for Medical and Health.

6. The short question that falls for consideration is whether the order of cancellation passed by the Assistant Director, Drugs Sales Licensing and Enforcement Authority, Drugs Control Administration, Nizamabad is illegal and or passed in violation of principles of natural justice.

7. With a view to regulate the import, manufacture, distribution and sale of drugs and cosmetics, the Drugs and Cosmetics Act, 1940, has been made. Section 18(c) of this Act clearly stipulated that no person shall himself or by any other person on his behalf sell or stock or exhibit or offer for sale or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a license issued for such purpose under Chapter IV of the Act.

8. Before I proceed any further it would be appropriate to bear in mind the relevant legal principles. The meaning of the word "stock" has fallen for consideration in *Sk. Amir Vs. The State of Maharashtra*, wherein it is held that it not necessary that drugs should be stored in a place in order that they can be said to have been stocked for sale. The principle reads thus:

8..... Section 18(a) of the Act which lays down an injunction that no person shall "stock" for sale a drug of certain description, section 18(c) which says that no person shall "stock for sale a drug except in accordance with the conditions of a licence issued for such purpose and section 27(a) which prescribes a penalty, for a person who stocks for sale a misbranded drug or a drug in respect of which no valid licence is held, do not use the word "stock" in

any technical sense. The plain meaning of the word "stock" in these provisions of the Act is "to keep" and the injunction of the law means no more than this that no person shall keep for sale a misbranded drug or a drug in respect of which a valid licence is not held. It is not necessary that the drug should be stored in a place in order that it can be said to have been stocked" for sale.....

9. Similarly, in *Swantraj and Others Vs. State of Maharashtra*, the Supreme Court held that the storage even though for short spells and on ad-hoc basis and without intent to sale at that place but as part of the sales business, falls within the scope of the expression "storage for sale" according in Section 18(c) of the Act. It is apt to notice the following passage from the above judgment:

10. If any godown, depot or premises become the nidus of spurious, time-expired or unscientifically stored drugs, can they be allowed to escape the coils of the penal law on the plea that they are not to be sold there, without great peril to patients? Then legal shelter for spurious drug rackets would be judicially ensured. And this colours construction. Stocked for sale there and then? or to be sold certainly but elsewhere later are the two alternatives flowing from the language of Sec. 18(1)(c). The former permits abuse through, loopholes, the latter tightens up but loads the dealer with expenses and need for more licences. Since risk to life and health is avoided by the latter interpretation, we hold that the storage, even though for short spells and on ad hoc basis and without intent to sell at that place but as part of the sales business, comes within the scope of storage for sale" in Section 18(c) and Rule 62. To loosen the law in its joints is to play with life and therefore anti-humanist.

10. In *The Govt. of A.P. Vs. M/s Durga Ram Pershad, Engineers and Contractors, Hyderabad*, a Division Bench of this Court held that the drugs stored in unlicensed premises would also amount to storage for sale in the following words:

The contention is that unless the sale takes place where the drugs are stored, then mere storing them in any other place is not forbidden nor does it come within the mischief of these provisions. We are not persuaded to understand the rule in this manner. The material words that will have to be understood in this context are "stocked for sale." In our view, the plain meaning is: if this stocking is intended for sale it is sufficient. The sale need not be at the place where the drugs are stocked. Otherwise, the very purpose and intendment of the Act and the Rules would be defeated.

Objection is then taken to the ground of stocking physician's samples. It is said that this is a wholly irrelevant ground. Reference is made to clause 18 of Rule 65 of the Drugs and Cosmetic Rules which rule prescribes the conditions of a licence. Clause 18 forbids selling or stocking by the licensee on his premises drugs which are intended for distribution to the medical profession as free samples.

The words "on his premises" are sought to be understood as licensed premises. It is difficult to agree with this construction of these words in Clause 18. We have

already noted that the godown on the Bhavanarayana Street has been taken by the detenu and he has been stocking his drugs there. So, in the general sense that godown in his premises. The construction sought to be laid on these words by the learned counsel, if accepted, would lead to preposterous results. Any licensee can with impunity, stock such forbidden goods in places other than his licensed premises and deal in them. Such could never be the intention of either the Parliament or the rule making authority. There is no reason to give any meaning other than the natural and obvious meaning to the words "on his premises" which patently mean premises which belong to the licensee or are under his custody and possession. As we have found, the godown was in his custody when these physician's samples were stocked.

11. Section 18(B) of the Act required every person holding a license under clause (c) of Section 18 to keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under the Act such information as is required by such officer or authority for carrying out the purposes of the act. u/s 21, the Central Government or the State Government may appoint such persons as it thinks fit having the prescribed qualifications to be Inspectors for such areas as may be assigned to them. Section 22 of the act empowered the Inspector to inspect any premises wherein any drug or cosmetic is being sold or stocked or exhibited or offered for sale or distributed. Section 33 of the Act empowered the Central Government to make rules for purposes of giving effect to the provisions of the Act. Accordingly, the Drugs and Cosmetics Rules, 1945, have been framed. Most importantly, Rule 55 of these rules dealt with the form of receipts to be passed on for seized drugs, cosmetics, record, register, documents or any other material object. It reads as under:

A receipt by an Inspector for the stock of any drug or cosmetic or for any record, register, document or any other material object seized by him under clause (c) or clause (cc) of sub-section (1) of Section 22 of the Act shall be in Form 16.

12. Rule 61 dealt with the forms of licenses to sell the drugs.

13. Rule 62 made it clear that if drugs are sold or stocked for sale at more than one place, separate application shall be made, and a separate license shall be issued, in respect of each such place. Rule 65 detailed the conditions subject to which the licenses are to be granted under the rules. General condition No. 2 thereof made it clear that the supply of any drug on the prescription of a Registered Medical Practitioner shall be effected only by or under the personal supervision of a registered Pharmacist. A Registered Pharmacist is a person who is registered as a Pharmacist as defined in Clause (i) of Section 2 of the Pharmacy Act, 1948. It was observed by the Inspector that there was no Registered Pharmacist (RP) present at the shop supervising the sales there. General Condition No. 17 clearly spelt out that no drug shall be sold or stocked by the licensee after the date of expiration of potency recorded on its container, label or wrapper, or in violation of any statement or direction recorded on such

container, label or wrapper. General Condition No. 18 further sets out that, no drug intended for distribution to the medical profession as free sample which bears a label on the container as such shall be sold or stocked by the licensee. Rule 66(1) stipulates that The Licensing Authority may, after giving the licensee an opportunity to show cause, cancel a license issued 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.

14. As was already adverted to supra, a show-cause notice was issued to the writ petitioner firm through proceedings Rc. No. 73/AD/NZB/2013 dated 01.03.2013, based upon the findings contained in the Inspection Report. The show-cause notice clearly alleged that the petitioner firm has supplied drugs on the prescription of a registered medical practitioner without supervision of a Registered Pharmacist (RP). As per observation No. 2 of the Inspection Report, thus, the requirement of Rule 65(2) of the Rules has been violated. It was further set out that the petitioner has failed to maintain the records of purchase of drugs intended for sales by retail and thus violated Rule 65(4)(3)(i) of the Rules. It was further alleged that the petitioner has failed to maintain the records relating to the supply of drugs and failed to maintain prescription register, cash/credit memo book and details of the Schedule (C) drugs supplied without a prescription as observed at No. 3 of the Inspection Report. It was further alleged that he has stocked for sale physician samples not to be sold and also salable drugs are stocked in an unlicensed premises. This show-cause notice bearing Rc. No. 73/AD/NZB/2013 dated 01.03.2013 has been placed at page No. 7 of the papers filed along with the counter affidavit. At the end of this page, the following endorsement is found:-

Received show-cause notice copy.

E. Prasad 1/3/13

15. As is already admitted by the petitioner in the affidavit filed in support of this writ petition, Sri E. Prasad is the other partner of the petitioner-firm. At page 8 of the same paper book is the receipt in Form-16 for the drugs which are seized u/s 22 of the Drugs and Cosmetics Act, 1940. This Form-16 was addressed to both Sri Kasetti Veresham and Sri Erram Prasad, the two partners of the petitioner-firm. It has listed out all the 76 drugs together with the complete particulars such as Name of the Drug, Batch No. Manufacturing Date, Expiry Date, Manufacturers name and Quantity. This Form-16 receipt ran to 10 pages of manuscript. It bears the signature of the Assistant Director as well as the Drugs Inspector, the mediators etcetera. Most significantly, at the end of the page 10, the following endorsement is found thereon:-

I received copy of Form-16 containing 10 pages.

16. Immediately, thereunder, the signatures of Sri K. Veresham, partner and Sri E. Prasad, partner of the petitioner-firm are found. The Assistant Director has

taken such a good care that he has obtained the signatures of Sri K. Veresham and Sri E. Prasad at each of the 10 pages of Form-16. This is placed between pages 8 to 17 of the counter affidavit. From a perusal of Form-16 dated 24.02.2013, the claim made by the petitioner-firm that it has not been furnished the details of the drugs seized at the go-down has to necessarily fall to ground. The respondents have acted strictly in accordance with law and furnished the receipt in Form-16 for all the 76 drugs seized by them containing full details, containing the information about the physician samples. This apart, the Panchanama Report was prepared by Sri Karigari Narsimhulu S/o Mallaiah and Sri Saga Ramulu S/o Swamy. In the Panchanama Report prepared in Telugu, in the very opening passage it was recorded that, the inspection of the go-down premises was carried out on 24.02.2013 between 10.30 AM to 5.00 PM and that the inspection was carried out in the presence of Sri K. Veresham and Sri E. Prasad. The panchanama ran into four pages and at the end of the fourth page, the following statement is made:

Received copy of mediator report

17. Then it was signed by Sri K. Veresham and Sri E. Prasad.

18. Therefore, the claim of the petitioner firm that the petitioners have nothing to do with the seizure of the drugs or that the go-down premises does not hold water. It was recorded in that Panchanama that the Managing Partners of the firm informed that the drugs on which it was printed as physician sample not for sale have been purchased from the medial representatives and hence do not have any receipts. This answer was furnished by Sri K. Veresham at the time of the panchanama. It was also recorded therein that the go-down premises is taken on hire as the medical stores is not having sufficient space. It is, hence, very reasonable to infer that the go-down premises was in the custody and possession of the partners of the petitioner firm. This apart, on 24.02.2013 intimation in terms of Section 23(5)(b) of Drugs and Cosmetics Act, 1940 has been filed before the Court of Judicial First Class Magistrate at Kamareddy by the Drugs Inspector, Kamareddy, enclosing thereto the copy of Form-16 dated 24.02.2013 and copy of the mediators report dated 24.04.2013. On 02.03.2013 the seized stock, which answers the description of property, has been deposited before the said Magistrate's Court as well. A report to that effect has also been filed by the Drugs Inspector before the Director General, Drugs and Copy Rights, Drugs Control Administration, Hyderabad, as well.

19. Most significantly, the Drugs Inspector, Kamareddy has issued a notice through his Rc. No. 73/D1/KMR/SCZ/2013 dated 04.03.2013 addressed to Sri K. Veresham and Sri E. Prasad, partners of the petitioner firm requiring them to furnish the source of supply of the seized drugs labeled as physician samples not to be sold, detailed in Form-16 dated 24.02.2013 and the partners of the petitioner-firm were called upon to furnish the purchase bill in that regard as required u/s 18(A) and Section 22(1)(cca) of the Drugs and Cosmetics Act, 1940. This show-cause notice dated 04.03.2013 is placed at page No. 38 of the counter

affidavit paper book. At page 39, the postal receipt of the registered letter furnished by the Head Post Office at Nizamabad is placed. The registered letter is addressed to Sri K. Veresham at Bibipet and the said letter is booked on 04.03.2013. At page 40 is one another receipt furnished by the Head Post Office, Nizamabad, for a registered letter booked to Sri E. Prasad of Bibipet on 04.03.2013. At page 41 and 42 of the papers filed along with the counter affidavit, the postal acknowledgment cards were placed. The registered letters sent to Sri E. Prasad and Sri K. Veresham were both received by them and acknowledged by them. At page 43, the explanation submitted by Sri K. Veresham and Sri E. Prasad on 12.03.2013 is placed. In the reference to thereof, this is what the partners of the petitioner firm quoted there:-

Your Office Letter R.C. No. 73/D1/KMR/SEZ/2013, dt:04-03-2013 received on 05-03-2013.

20. From this explanation submitted by the partners of the petitioner firm on 12.03.2013, it becomes imminently clear that they have responded to the show-cause notice issued by the Drugs Inspector, Kamareddy, Nizamabad District on 04.03.2013 calling upon the petitioner to disclose the source of purchase of physician samples not to be sold and also to furnish the purchase bill. This is a different show-cause notice from the one which is issued by the Assistant Director, Drugs Control Administration, Nizamabad through his proceedings Rc. No. 73/AD/NZB/2013 dated 01.03.2013 proposing to cancel the license. The petitioners are trying to confuse one show-cause notice with the other. It is only appropriate to notice that the first show-cause notice dated 01.03.2013 emanated from the office of the Assistant Director, Drugs Control Administration, Nizamabad, calling upon the petitioner to show cause as to why the drug license in Form No. 20, 21 should not be suspended/cancelled for violations set out therein. Whereas, the show-cause notice dated 04.03.2013 has emanated from the office of the Drug Inspector, Kamareddy at Nizamabad District. That was dated 04.03.2013. It is purely incidental that the Assistant Director of Drugs Control Administration, Nizamabad is also holding the Full Additional Charge (FAC) of the office of the Drugs Inspector, Kamareddy, Nizamabad District. Therefore, two different agencies have issued two different show-cause notices for two different purposes to the petitioner firm. The first one emanated from the office of the Assistant Director at Nizamabad on 01.03.2013 while the second one emanated from the office of the Drugs Inspector, Kamareddy at Nizamabad on 04.03.2013. The 04.03.2013 notice was received by the petitioners on 05.03.2013. They have responded to that show-cause notice by their explanation dated 12.03.2013, whereas, the show-cause notice from the Assistant Director of Drugs Administration was received by the petitioners on 01.03.2013 itself, as per the endorsement made by Sri E. Prasad on the copy of the said show-cause notice on 01.03.2013. The petitioner has not bothered to give any reply to this show-cause notice issued by the Assistant Director, Drugs Control Administration on 01.03.2013. The petitioner has only filed a reply to the show-cause notice issued by the Drugs Inspector, Kamareddy on 04.03.2013, whereas, in the

affidavit filed in support of this writ petition, it is asserted that inspite of filing the explanation on 12.03.2013, the Assistant Director has passed the impugned order without taking the same into account. This assertion of the petitioner is factually incorrect. The petitioner firm has not responded to the show-cause notice of proposed suspension/cancellation of their drug license dated 01.03.2013. The violations of the conditions of the grant indulged in by the petitioner have all been recorded chronologically in the show-cause notice. They are neither denied nor disputed. In fact, the receipt passed on to the petitioners in Form-16 contained all the necessary details. The Form-16 is also promptly filed before the Judicial 1st Class Magistrate Court at Kamareddy by the Drug Inspector. Form-16 was received by both the partners of the petitioner-firm. Therefore, the contention canvassed by the petitioner that for non valid or justifiable reason the drug license has been cancelled and that they are not informed of the details about the violations indulged in by them is completely misplaced and is factually incorrect. Equally, the contention that for vague or non-specific reasons the license was cancelled also does not hold water. Therefore, the action of the respondents cannot be described as in violation of principles of natural justice. It is infact the petitioner-firm and its partners who have not responded to the show-cause notice dated 01.03.2013. Therefore, no exception need be drawn to the order of cancellation of the drug license passed by the Assistant Director, Drugs Control Administration, Nizamabad. Therefore, I do not see any merit in this writ petition and it is accordingly dismissed. Miscellaneous applications if any shall also stand dismissed. No costs.