
(2019) 06 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17210 Of 2018

M/S Pharmacy Partner Rajesh Kumar Mannujee APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Drugs And Cosmetics Rules, 1945 — Rule 61(1)

Citation : (2020) 1 PLJR 447

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Ram Shankar Das, Ramadhar Singh

Final Decision : Allowed

Judgement

This writ application has been preferred for setting aside the order dated 06.08.2018 passed in Appeal Case No. 08/2018 by the appellate authority

under the Drugs and Cosmetics Act, 1940 read with Rules framed thereunder whereby and whereunder the appellate authority has been pleased to

dismiss the appeal preferred by the petitioner against the order as contained in letter No. 56 dated 30.01.2018 passed by the Assistant Drug Controller,

Patna cancelling the license of the petitioner to sell or distribute the drugs in the name of M/s Pharmacy.

It is the case of the petitioner that the petitioner was running its medicine shop in the name of M/s Pharmacy vide license No. PAT 509/2015 &

PAT 509A/2015 for sale and distribution of drugs. The license issued to the petitioner are said to be valid and operative till 13.10.2020. It appears that

on 27.04.2017, a team of Drug Inspectors conducted an inspection in the medicine shop being run in front of Patliputra Station in Mohalla Gandhi

Nagar by one self-claimed doctor namely Dr. Ajit Kumar. In course of inspection,

they seized some medicines and purchase invoice No. R00347

dated 23.02.2017 issued by M/s Pharmacity (the petitioner). From the invoice, it appeared that the petitioner had sold the medicine Ceftamycin Dry

Syrup Batch No. 17485 manufactured by Venus having expiry date of 10/17 quantity being 10 bottles to one M/s Captain Pharma C/o "Rajendra

Memorial Hospital, Khemnichak, Patna. Another invoice bearing No. R00385 dated 17.03.2017 for the same item showing a sale of 20 bottles of the

medicine to the same firm M/s Captain Pharma was found.

In order to verify the invoices raised by this petitioner, the inspecting team visited the shop premises of this petitioner on 28.04.2017. They called for

the stock register of Ceftamycin Dry Syrup 30 ml. Which was made available. The register showed the sale of the said medicine/drug under the two

invoices. The proof of payments were also made available to the inspecting team. The proprietor of the petitioner's firm informed in course of

inspection that the medicines aforementioned were sold at the instance of the Representative of Venus Remedies. The name of said Representative

was disclosed as Sri Krishna Kumar with his mobile number and the same was verified by the inspecting team by calling said Sri Krishna Kumar on

his mobile number. Sri Krishna Kumar accepted in course of telephonic talk that both the invoices were raised by the petitioner at his instance in the

name of M/s Captain Pharma and the medicines were given to a person whose name and address was not known, whether the said person is

connected with M/s Captain Pharma or not was not known. Sri Krishna Kumar accepted that he had made payment of the medicines to this

petitioner. The inspecting team recorded the aforementioned facts in the inspection report dated 28.04.2017, a copy of which is available on record as

Annexure 1 to the writ application.

Thereafter a show cause notice was issued to the petitioner vide Memo No. 598 dated 11.07.2017 and he was called upon to submit his reply in the

light of what were recorded in course of inspection. Petitioner submitted his reply dated 23.01.2018 vide Annexure 3 to the writ application in

which he submitted that the two invoices were issued by the petitioner at the instance of the Representative of the Company. The petitioner also

disclosed that there was no provision for verification of the license of the purchaser at the time of sale of medicine and that he had sold the medicine

being fully satisfied on the photocopy of the license of M/s Captain Pharma produced by the Representative of the Company. He submitted that if any unknown person had been given those medicines, the petitioner had nothing to do with the same. Petitioner had enclosed copy of the license issued in the name of M/s Captain Pharma showing that the said firm had a valid license up to 21.12.2019 in Form No. 21 relatable to Rule 61(1) of the Drugs and Cosmetics Rules.

The Assistant Drug Controller, thereafter passed the impugned order as contained in Annexure 5 dated 30.01.2018 by holding that the sale of medicine in the name of M/s Captain Pharma on the basis of the Xerox copy of the drug license produced by Sri Krishna Kumar, the Representative of the medicine Company is in violation of condition No. 3(ii) and 4(ii) of the Drug License. He, therefore, cancelled the license of the petitioner for the alleged violation.

The petitioner thereafter preferred an appeal before the appellate authority. He took a plea that invoices were issued only after he was shown the

license of M/s Captain Pharma through Medical Representative of Venus Company Krishna Kumar and it was totally beyond his imagination that the

drugs be sold to the original licensee only and not to any representative of the licensee showing the license. The petitioner also submitted that the

license was issued to him on 14.10.2015, there was no allegation of violation of any terms of the license against him prior to the service of the show

cause in the present case and in the given facts of the case it is too harsh a punishment to cancel the license in its entirety of a shop which is only

1½ years old. It was submitted that save and except the allegation there as no material against the petitioner to support the allegations of violation of

any of the terms and conditions of the license. In course of inspection nothing inappropriate was found in the shop of the petitioner.

The appellate authority however rejected the appeal preferred by the petitioner by simply recording in the appellate order that the stand of the petitioner was found dissatisfactory.

Learned counsel for the petitioner has submitted before this court that from a bare perusal of the appellate order dated 06.08.2018 passed by the

appellate authority it would appear that he has simply recorded the submissions of the petitioner and thereafter rejected the appeal without giving any

consideration and by holding in one line that the stand of the petitioner was dissatisfactory. It is submitted that the cancellation of license of the petitioner shop has got a civil consequence and apparently the allegations made against the petitioner are not such that it required cancellation of the license itself. Learned counsel submits that the impugned orders passed by the Assistant Drug Controller as well as appellate authority are fit to be quashed and cancelled on the ground of non-consideration of the materials available on the record as also for the reason that the punishment by way of cancellation of license is excessive.

On the other hand, learned counsel for the State respondents has opposed the writ application. It is submitted that the impugned order do not suffer from any illegality and both the orders have been passed after considering the materials available on the record. It is also submitted that the order has been passed giving reasons and therefore no interference is required.

In course of hearing of the writ application it was submitted before this court that a police case had also been registered against the petitioner on the same set of allegations on which the license of the petitioner had been cancelled. This court was informed that till date police has not submitted any charge-sheet in the police case being Rajiv Nagar P.S. Case No. 94/2017.

Having heard learned counsel for the parties and on perusal of the records, this court finds that the facts of the case are not in dispute. It was the

stand of the petitioner that he had sold the medicine in question which is a dry syrup to M/s Captain Pharma on the request of Sri Krishna Kumar, the

Representative of the Company who had produced the photocopy of the drug license of M/s Captain Pharma. The stock register produced before the

inspecting team certified the position as appearing from the two invoices. Sri Krishna Kumar who is the Representative of M/s Venus Remedies i.e.

the manufacturing company of the medicine has acknowledged and accepted the fact that he had got the medicines under the two invoices for M/s

Captain Pharma. He however failed to explain as to whom the medicines were handed over and whether the person to whom the medicines were

handed over had any connection with M/s Captain Pharma or not. The Assistant Drug Controller has accepted the stand of the petitioner but then he

has proceeded to pass the impugned order as contained in Annexure 5 alleging violation of Condition No. 3(ii) and 4(ii) of the Drug License

which reads as under : -

3(ii). No sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug. Provided that

the condition shall not apply to the sale of any drug to â?

- a. an office or authority purchasing on behalf of Government, or
- b. a hospital, medical, educational or research institution, or a registered medical practitioner for the purpose of supply to his patients, or
- c. a manufacturer of beverages, confectionery biscuits and other non- medicinal products, where such drugs are required for processing these products.

4(ii). No sale of any drug shall be made for purpose of resale to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute

the drug. Provided that this condition shall not apply to the sale of any drug to â?

- a. an officer or authority purchasing on behalf of Government, or
- b. a hospital, medical, educational or research institution, or a registered medical practitioner for the purpose of supply to his patients, or
- c. a manufacturer of hydrogenated vegetables oils, beverages, confectionery and other non-medicinal products, where such drugs are required for processing these products.â??

On going through the aforesaid two conditions it would appear that the sale of any drug to a person not holding the requisite license to sell, stock or

exhibit for sale or distribute the drug is prohibited but then the condition as contained in Clause 3(ii) and 4(ii) are to be applied in the context those

conditions are to be understood with the object to be achieved. In the present case, the sale of medicine/drug has been made in favour of M/s Captain

Pharma which is a Firm having a valid license. The medicines are being manufactured by M/s Venus Remedies and Sri Krishna Kumar being

Representative of M/s Venus had produced the copy of the license of M/s Captain Pharma before the petitioner which the petitioner believed to be

true and sold the medicines to M/s Captain Pharma and handed over the medicine to Sri Krishna Kumar who was none else but the Representative of

the Company. Sri Krishna Kumar had accepted this position. The Assistant Drug Controller while considering the stand of the petitioner did not think it

just and proper to verify these facts from M/s Captain Pharma in whose name

the medicines were sold. M/s Captain Pharma has neither been called upon nor any stand has been taken on behalf of M/s Captain Pharma saying that the said Sri Krishna Kumar was not acting bonafidely in the matter of getting invoices raised in the name of M/s Captain Pharma. In these conditions, no inquiry has been made by the inspecting team or the Assistant Drug Controller to know as to how and from where these medicines went sold to the shop of Dr. Ajit Kumar.

In its reply to the show cause notice the petitioner had taken a stand that there is no mechanism to verify the drug license of the customer, this aspect of the matter has not at all been discussed by the Assistant Drug Controller in his order. The petitioner has also taken a stand that he had not sold the medicine for any individual benefit and no fraud was played by selling the medicines to M/s Captain Pharma. The Assistant Drug Controller has assumed upon himself that the medicines were sold to an unknown person which is not a correct assumption of fact when it may be easily concluded from the materials available on the record that Sri Krishna Kumar was not an unknown person rather he was a Representative of the manufacturing Company. In the police case, till date, no charge- sheet has been filed against the petitioner.

To this court, it appears that the Assistant Drug Controller has passed the impugned order cancelling the license of the petitioner, in haste without even verifying these transactions from M/s Captain Pharma and also without taking into consideration the fact that Sri Krishna Kumar was admittedly a Representative of the Manufacturing Company who had accepted having taken the medicine on the basis of the drug license of M/s Captain Pharma in the name of M/s Captain Pharma. Cancellation of license has got a civil consequence and while exercising such drastic power to cancel the license the Assistant Drug Controller was required to look into all aspects of the matter and only in case of a categorical finding that the petitioner had acted in violation of the conditions of license, knowingly and without exercising due diligence and care, such order could have been passed.

In the opinion of this court, the impugned order as contained in Annexure 5 to the writ application suffers from non-consideration of the materials available on the record as also seems to have been passed in haste on half hearted consideration. Unfortunately, when the petitioner availed

his remedy of statutory appeal before the appellate authority vide Appeal Case No. 08/2018, the appellate authority has not at all considered the

submissions of the petitioner and rejected the appeal. On going through the order passed by the appellate authority it appears that only a formality has

been done towards disposal of the appeal by simply recording the submissions of the parties and then in one short paragraph a conclusion has been

reached saying that the stand of the petitioner was found dissatisfactory. None of the grounds of appeal has been discussed or dealt with.

The order having a civil consequence affecting the petitioner in many ways in life cannot be allowed to sustain.

In result, the order passed by the Assistant Drug Controller as contained in Memo No. 56 dated 30.01.2018 (Annexure 5) and the appellate

order in Appeal Case No. 08/2018 contained in Annexure 9 to the writ application are hereby quashed.

This writ application stands allowed.

The license of the petitioner is restored forthwith.