(2025) 05 OHC CK 1174

In the Orissa High Court

Case No : Writ Petition (C) No. 2345 Of 2023

M/S Puja Enterprises Being Represented Through Its Proprietress Smt. Chanchal Jalan — APPELLANT

Vs

State Of Odisha Represented Through Commissioner-Cumsecretary To Govt. Of Odisha, Health And Family Welfare Department, Bhubaneswar & Others Vs — RESPONDENT

Date of Decision : 23-05-2025

Acts Referred:
Indian Penal Code, 1860 — Section 34, 326, 336, 420, 483, 486
Drugs and Cosmetic Act, 1940 — Section 16, 16(1)(a), 17B, 17B(e), 18, 18(a)(i), 18(a)(vi), 19, 19(3)
Drugs Rules, 1945 — Rule 46, 62, 66, 66(1), 66(2)

Citation : (2025) 05 OHC CK 1174

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Bibhu Prasad Das, Prabir Kumar Ray

Final Decision : Disposed Of

Judgement

R.K. Pattanaik, J

1. Instant writ petition is filed by the petitioner being aggrieved of the impugned decision by order dated 11th January, 2023 as at Annexure-15 of learned Commissioner-cum-Secretary to Govt. of India, Health and Family Welfare Department, namely, opposite party No.1 for having rejected the appeal preferred assailing the impugned order dated 29th September, 2022 (Annexure-12) of learned Deputy Drugs Controller (Administration), Bhubaneswar, Khurda for suspending the drugs licenses on the grounds inter alia that such a decision and action is unjust and arbitrary, hence, therefore, liable to be interfered with followed by consequential directions issued.

2. As pleaded on record, the petitioner is a sub-wholesaler and procured medicines, namely, Telma-40 and Telma-AM from M/s Balaji Drug Point, Goya,

Bihar, namely, opposite party No.3. In fact, the proprietress of the petitioner has the license to sell pharmaceutical drugs and is involved in the business of distribution of medicines of different companies and carries out transactions in that behalf with various distributors and dealers pan India. The copies of the drug licenses issued in the name of the license holder are at Annexure-1 series. It is pleaded on record that in the month of May, 2022, in course of business, the petitioner was offered to supply various drugs including the drugs named above manufactured by M/s Glenmark Pharmaceuticals Private Limited having been approached by one Alok Mishra, who introduced himself as a representative of opposite party No.3 and since, the said Agency offered better profit margins and business flexibility compared to others, with the necessary statutory compliances, the purchases were made by her. It is further pleaded that as the conditions of the licenses stipulate that no drugs should be sold unless purchased from a duly licensed dealer or manufacturer, the petitioner made the necessary enquiry and with due diligence ascertained the credentials of the Agency before accepting the business deal and upon obtaining such information verified through the portal of the Directorate of Drugs Control, Bihar and the licenses issued to the Agency as per Annexure-2 and thereafter, she placed the orders for the drugs on multiple occasions between May, 2022 and September, 2022.

2.1. In the meanwhile, the Drug Inspector, Cuttack Range-I, Cuttack visited the sale premises of the petitioner on 6th September, 2022 and enquired about the stock of the medicines, such as, Telma-40, Ultracet and Zerodol SP with respective batch details and on 8th September, 2022 freezed the same and then, issued Form-15 (Annexure-4) directing the petitioner not to sell any medicines from the said stock until further instructions. As further stated, again on 9th September, 2022, the Drug Inspector, Cuttack-I Range, Cuttack and other officials inspected the sale premises and collected sample of the drug, namely, Telma-AM as per Annexure-5 in Form-17 and on the same date, seized the items of drugs and documents and issued Form-16 at Annexure-6.

2.2. Later to the inspection and seizure, an FIR was lodged and accordingly, a case was registered as Purighat P.S No.222 of 2022 under Sections 420, 326, 336, 483 and 486 read with Section 34 IPC and thereafter, the husband of the proprietress of the petitioner was arrested and was released on bail on 2nd November, 2022. The petitioner, as it is further stated, was issued with a show cause notice as per Annexure-8 to reply alleging that she sold and distributed Telma-40 tablets labelled as manufactured by M/s Glenmark Pharmaceuticals Private Limited found to be spurious as defined under Section 17B (e) of the Drugs and Cosmetic Act, 1940 (hereinafter referred to as 'the Act') and also contravened Section 18(a)(i) thereof and asked for an explanation within seven days from the date of receipt of such notice (Annexure-8). In the meantime, the petitioner claimed to have received a letter at Annexure-9 with an intimation that Telma-AM was found to be spurious since the sample of the same did not conform to the identification, hence, was instructed to preserve its stock which was lying with her at the time of sampling until further instructions were received.

2.3. The petitioner pleaded that it is not a manufacturer or an agent of the manufacturer and in response to the notice, advanced a plea in terms of Section 19(3) of the Act with a reply dated 22nd September, 2022 at Annexure-11, however, opposite party No.2 passed the order dated 29th September, 2022 suspending the wholesale drug licenses issued in Form-20-B, 21-B and 20-G bearing Nos.CU-15585/W,CU-15586/WC and CU-5132/W until further orders and with immediate effect for having contravened Section 18(a)(i) read with Section 17B and Section 18(a)(vi) of the Act with a conclusion therein that the petitioner failed to make an enquiry with diligence to ascertain the fact that opposite party No.3 to be not operational from its licensed premises thereby not complying one of the conditions stipulated in Form-20-B. Similarly, according to the petitioner, sample of Telma-AM was held to be spurious. With such a conclusion, the licenses of the proprietress of the petitioner stood cancelled by order at Annexure-12, which was challenged before opposite party No.1 as per Rule 66(2) of the Drugs Rules, 1945 (in short 'the Rules') and during the pendency of the appeal, the report dated 5th December, 2022 in respect of Telma-40 was received and was duly intimated to the petitioner by the Drugs Inspector, Cuttack Range-I, Cuttack. A copy of the said report is at Annexure-13. The petitioner with the defence available and plea as per Section 19(3) of the Act claimed revocation of the suspension of drug licenses as per Annexure-12, but it was followed by the impugned order dated 11th January, 2022 (Annexure-15). It is also pleaded that opposite party No.1 failed to consider the grounds raised by the petitioner in appeal and upheld the order of opposite party No.2 suspending all the drugs licenses and therefore, the decision at Annexure-15 manifestly unjustified and without jurisdiction.

3. The following are the grounds advanced by the petitioner questioning the correctness of the impugned order at Annexure-15 and all are summarized herein below.

3.1. The petitioner is entitled to protection under Section 19(3) of the Act as before having business deal with opposite party No.3, required enquiry was conducted and even obtained a license copy of the Agency from the Govt. portal, hence, leaving no room for any doubt about its credentials.

3.2. There is no mechanism to check the authenticity of the medicines sold labelled to have been manufactured by M/s Glenmark Pharmaceuticals Limited, as on the face of it, the packing and conditions of consignment were similar to other consignments of drugs manufactured by the said company and that apart, there was no such indicator to attract one's attention to suggest the drugs to be spurious.

3.3. Opposite party No.1 did not allege against the petitioner about the seized drugs not to have been properly stored or remain in the same condition as it was at the time of seizure, while lying in her custody.

3.4. It is not possible on the part of the petitioner to identify opposite party No.3

operating from a different locality in Goya town, hence, the impugned action is harsh, inasmuch as, it has taken due diligence as far as possible and necessary in the prevalent business practice.

3.5. Moreover, the petitioner has not been guilty of any similar act or omission within 12 months and hence, deserves to be covered by the protection provided under Rule 66(1) Proviso (b) of the Rules.

3.6. The petitioner has had no ill-intention for having procured the drugs from outside the State as is alleged by opposite party No.1 for the reason that it would be more profiteering, while the authorized wholesaler of M/s Glenmark Pharmaceuticals Private Limited existed in Odisha but any such ground does not hold good in absence of legal bar to do business with any dealer from outside the State and hence, her conduct cannot therefore be held as malafide.

3.7. No sufficient reasons have been assigned while suspending the licenses when the alleged mischief relates to only two drugs, namely, Telma-40 and Telma-AM and therefore, there is non-compliance of Rule 66(1) of the Rules, as by such action, it has completely prohibited the petitioner to carry out the wholesale drugs business.

3.8. The tablets in question are 'Schedule-H' drugs and covered under the drug license in Form-20-B and therefore, suspension of all the licenses is illegal and arbitrary as it has resulted in blanket suspension without sufficient cause or reason and the same has led to substantial business loss affecting daily livelihood of the petitioner as she has no other means of income other than the wholesale drug license.

3.9. Above all, there is no compliance of Rule 46 of the Rules with regard to test or analysis in terms of the protocols as has been prescribed therein.

4. Heard Mr. Das, learned counsel for the petitioner and Mr. Ray, learned AGA for the State.

5. Mr. Das, leaned counsel for the petitioner submits that show cause notice dated 16th September, 2022 related to Telma-40, in respect of which, reply was furnished on 22nd September, 2022 followed by the order (Annexure-12) of the Drug Inspector, Cuttack Range-I, Cuttack on 29th September, 2022. However, it is claimed by Mr. Das, learned counsel, no test report in respect of Telma-40 was received by the time of issuance of the show cause notice dated 16th September, 2022. It is further claimed that the test report of the said drug is of the month December, 2022. It is alleged that no sample was collected of the drug Telma-40. The claim is that sample of Telma-AM was collected instead after test report was received on 17th September, 2022. In fact, according to the claim of the petitioner, instruction was received with a letter dated 17th September, 2022 to preserve the stock of Telma-AM, of which, sample was collected until further intimation. Mr. Das, learned counsel would submit that no show cause reply was called for with respect to Telma-AM. The contention is that the sample of Telma-

AM was not collected but on 16th September, 2022, the petitioner was called upon to show cause in respect of Telma-40, all the more when, the test report of the said drug was prepared on 5th December, 2022. The further contention is that by the time of the order of suspension of all the licenses on 29th September, 2022, no test report in respect of Telma-40 had been received. The claim is that without any show cause reply received in respect of Telma-AM, subsequent to the test report dated 17th September, 2022, the impugned action was followed by the order dated 29th September, 2022 (Annexure-12) and confirmed vide Annexure-15 and for the above exercise, the petitioner has been made to suffer immensely and stands substantially prejudiced.

6. Mr. Das, learned counsel for the petitioner submits that there is a clear distinction between drugs to be 'spurious' and 'not of standard quality' as defined in Sections 16 and 17B of the Act. In fact, nowhere in the show cause notice for the drug, namely, Telma-40, it has been alleged to be spurious, hence, the contention is that the show cause notice dated 16th September, 2022 in respect of the said drug is premature and furthermore, by then, there was no test report. In any case, according to Mr. Das, learned counsel, there has been no allegation in the show cause dated 16th September, 2022 of any other substitute to have been found in the drug, namely, Telma-AM as the sample merely did not conform to the identification. With the above claim, the contention is that there is a clear difference between the expression 'not of standard quality' and 'spurious' and even though, the show cause notice revealed the drug to be spurious, whereas, the test report branded it as 'not of standard quality' and the said aspect has not been duly taken judicial notice of by learned authorities below and therefore, the decision to suspend all the licenses is not proper, rather, an action of illegality and grossly arbitrary. While defending the plea of the petitioner, Mr. Das, learned counsel alleging that the impugned decision followed by the suspension of licenses, which has put an end to the wholesale business of the petitioner, cited the following decisions, such as, M/s Techno Prints Vrs. Chhattisgarh Textbook Corporation and another in Civil Appeal No.2362 of 2025 arising out of SLP(C) No.10042 of 2023 dated 12th February,2025; M/s Samsung India Electronics Private Limited Vrs. State of Uttar Pradesh and others of Allahabad High Court in Writ Tax No.777 of 2022 and Hindustan Petroleum Corporation Limited and others Vrs. Super Highways Services and others (2010) 2 SCR 1053. Referring to Section 19 of the Act and the defence available to the petitioner and a case law in Chander Kanta Bansal Vrs. Rajinder Singh Anand (2008) 5 SCC 117, Mr. Das, learned counsel contends that there has been due diligence, as is normally expected from a prudent person, at the behest of the petitioner before entering into the business deal with opposite party No.3. It is contended that the petitioner has not been found guilty of any such misconduct within 12 months before the date on which the sale premises was inspected and the alleged sample was collected of the drugs, hence, before considering suspension of licenses, Rule 66 of the Rules was to be taken cognizance of by learned authorities below but such protection has not been extended and that apart,

when she has been exonerated in view of the chargesheet filed against others. It is also contended that the petitioner being the license holder should have been allowed interim stay of the order of suspension in order to avail the statutory remedy by way of appeal under Rule 66(2) of the Rules but it has not been considered, inasmuch as, all the licenses were cancelled and in that connection, Mr. Das, learned counsel cited one more case law in Emcure Pharmaceuticals Limited Vrs. The State of Bihar and others MANU/BH//0994/2016. Precisely stated, the grounds narrated herein before, have been raised to question the legality and judicial propriety of the impugned orders at Annexures-12 &15.

7. Referring to the counter affidavit of opposite party Nos.1 and 2, Mr. Ray, learned AGA for the State submits that in view of the reply of the manufacturer duly intimated and received vide Annexure-F/2, the drug, namely, Telma-AM, as found in the custody of the petitioner, shall have to be held as spurious in view of Section 17B(e) of the Act. It is contended by Mr. Ray, learned AGA that opposite party No.3 was not functioning from its licensed premises which is in complete violation of one of the conditions of license and since the petitioner did not carry out the enquiry, as it was expected and needed, due diligence has not been established. The contention is that all such necessary enquiry was desirable in respect of Agency, namely, opposite party No.3 to verify its credentials but the petitioner failed to do so and therefore, the defence plea in terms of Section 19(3) of the Act is unacceptable. The further contention is that separate applications are to be made in respect of all such premises to have the licenses but on an enquiry, since opposite party No.3 was found not to be operational from its licensed premises, the petitioner was required to enquire about the same and she having not discharged such an onus, it was followed by the action suspending the licenses, a decision which could not be alleged as unreasonable and illegal. While claiming that opposite party No.3 did not conform to the statutory requirements to make its licensed premises operational but functioned elsewhere, Mr. Ray, learned AGA refers to Rule 62 of the Rules.

8. In the counter affidavit, it is pleaded that the Drug Inspector, Cuttack Range-I, Cuttack, while issuing show cause notice, informed regarding drawal of statutory sample vis-à-vis Telma-40 of M/s Kyal Agencies Private Limited, Bhubaneswar so supplied to it by the petitioner vide Invoice No.870 dated 29th August, 2022, hence, no further sample was collected from the supplier point and refers to the sale statement along with the test report in respect of the said drug as at Annexure-B/2 and in that connection, permission was obtained from the court of learned S.D.J.M., Sadar, Cuttack to draw the sample from the batch drug required for analysis and to support such a claim, Annexure-C/2 and Annexure-D/2 have been referred to. Mr. Ray, learned AGA would submit that all the tests and analyses were carried out as per the protocols laid down in the Indian Pharmacopoeia (IP) and when the test report clearly mentioned Telma-AM tablets not to conform to the IP, the drug failed the quality standard and that apart, the report dated 17th September, 2022 (Annexure-E/2) indicated the quality and quantity in the sample with its components, namely, Telmisartan-40 mg and

Amlodipine- 5 mg. It is contended that as the sample did not conform to the identification, it has, therefore, held to be spurious and besides that, the manufacturer M/s Glenmark Pharmaceuticals Private Limited after having received a portion of the sample drug carried out a detailed study in comparison to the original product and replied the subject drug, namely, Telma-AM with the batch detail is not being manufactured by them and therefore, according to Mr. Ray, learned AGA, the same is to be branded as spurious. The contention of Mr. Ray, learned AGA is that there is no wrong or illegality in the decision of learned authorities below and therefore, the impugned decision as per Annexure-15 of opposite party No.1 does not call for any interference.

9. A criminal prosecution has been initiated against the husband of the proprietress of the petitioner and another. The licenses have been granted to the proprietress, namely, Chanchal Jalan, whereas, her husband, namely, Sanjay Kumar Jalan has been criminally prosecuted in connection with Purighat PS Case No.222 of 2022 and as earlier stated, he has been released on bail. The proprietress of the petitioner was issued with wholesale drug licenses. The licenses were issued as per Annexure-1 series in Form-20-B, 21-B and 20-G. As per the above licenses, it was for the proprietress having the license to sale, stock or exhibit or offer for sale or distribute by wholesale drugs from the premises mentioned therein subject to the provisions of the Act and Rules framed thereunder and such sale of drugs shall be made under the personal supervision of a competent person, namely, her husband, Sanjay Kumar Jalan. The conditions of the licenses stipulate that the licensee shall comply the provisions of the Act and Rules and no drug shall be sold unless such a drug is purchased in cash or credit manner from a duly licensed dealer or a manufacturer. In the instant case, the petitioner claimed to have purchased the alleged drugs from a licensed dealer, namely, opposite party No.3. It is also claimed that due enquiry was made to ascertain the credentials of the dealer verifying the same through the Govt. portal. The copies of the drug licenses in Form-20-B and 21-B of opposite party No.3 at Annexure-2 are referred to claim that such enquiry has been held before accepting the business deal. The plea has been advanced in terms of Section 19(3) of the Act to claim that the defence is available to the petitioner in view of the fact that it has acquired the drugs from a duly licensed dealer and despite reasonable diligence, it could not have ascertained that the drugs in any way do not conform to the provisions of the Act and that apart, it was in their possession properly stored and remained as such and in the same state, when was acquired by them.

10. In fact, Section 19 of the Act deals with the defence in a prosecution to prove that the accused was ignorant of the nature, substance or quality of the drug or cosmetic, in respect of which, an offence has been committed. In any such prosecution, the person accused of the offence, shall not be held liable for contravention of Section 18 of the Act, if he is able to satisfy the conditions as stipulated in sub-section (3) of Section 19 of the Act as discussed hereinbefore. In the present case, the plea as advanced with a defence in terms of Section

19(3) of the Act to claim that there is no contravention of Section 18 thereof as is alleged against the person-in-charge on behalf of the license holder is to be gone into during trial by the learned S.D.J.M., Sadar, Cuttack.

11. Admittedly, a show cause notice was issued to the petitioner in respect of the drug, namely, Telma-40 with a reply received from him. Interestingly, however, the test report was received on 5th December, 2022. It is not revealed from the record, as to when, the sample of Telma-40 was collected from the sale premises of the petitioner, rather, claimed to have been obtained from M/s Kyal Agencies Private Limited, Bhubaneswar. In fact, the test report dated 17th September, 2022 was received for Telma-AM and on the same date, the petitioner was directed to preserve the drug until further instructions. Though, the show cause for Telma-40 was issued and a reply was furnished by the petitioner on 22nd November, 2022, it was followed by the order of suspension of licenses on 29th September, 2022, all the more when, test report for the said drug arrived in the month of December, 2022. It may be said that there has been no show cause notice issued for Telma-AM as the one received by the petitioner relates to Telma-40. Quite curiously, considering show cause reply dated 22nd September, 2022 for Telma-40, by order dated 29th September, 2022, the learned authority concerned suspended all the licenses of the proprietress of the petitioner, even before receiving the test report of Telma-40 dated 5th December, 2022. It is not discernible from the record, how the licenses of the petitioner have been cancelled even prior to the test report dated 5th December, 2022 received by the Drug Inspector, Cuttack Range-I, Cuttack. Mr. Das, learned counsel for the petitioner submits that the entire exercise with the suspension of licenses is premature and the impugned order travels beyond the scope of the show cause notice dated 22nd September, 2022. The Court, considering the facts pleaded and contentions advanced, is of the humble view that the impugned order dated 29th September, 2022 does not deal with the same nor by opposite party No.1, while confirming it vide Annexure-15.

12. As per Section 16(1)(a) of the Act, the expression ‘standard quality’ has been defined in relation to a drug that complies with the standard set out in the Second Schedule appended thereto, whereas, a drug shall be deemed to be ‘spurious’ in view of Section 17B of the Act (a) if it is manufactured under a name which belongs to another drug; or (b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or (c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or (d) if it has been substituted wholly or in part by another drug or substance; or (e) if it purports to be the product of a manufacturer of whom, it is not truly a product. On a bare reading of the above provisions, it is crystal clear that distinction lies between ‘standard quality’ and a drug claimed to be ‘spurious’. A drug is held to

be spurious or deemed as such, if it falls within the definition of Section 17B of the Act. In the case of the petitioner, it is claimed by the State that reply and confirmation was received from the manufacturer M/s. Glenmark Pharmaceuticals Private Limited about the subject drug Telma-AM with batch No.18220083 not to have been manufactured by them, hence, it has been alleged that the same to be spurious. But, fundamentally, a drug not conforming the standard quality cannot be said to be spurious unless it falls within the ambit of Section 17B of the Act. Whether the drug in question with a reply at Annexure-F/2 having been received alleging it to be spurious is a matter to be duly examined before the Court during trial. Even assuming for the sake of argument that Telma-AM was confirmed not to have been manufactured by the original company, the petitioner is having all the rights to advance a plea in terms of Section 19(3) of the Act. The plea is that there is no malafide on the part of the petitioner as due enquiry was made with regard to the dealer upon verification from the Govt. portal before proceeding with the business deal and it is sought to be justified with reference to the drug licenses in Form-20-B and 21-B of opposite party No.3 at Annexure-2. Though, such a plea is available as a means of defence against criminal prosecution as per Section 19(3) of the Act but it could still be duly taken judicial notice of by the authority concerned, while considering cancellation or suspension of license exercising jurisdiction in terms of Rule 66 of the Rules, wherein, its stipulated that for such failure or contravention in complying any of the conditions of the license or provision of the Act or Rules made thereunder, the license shall not be cancelled or suspended, if license is proved with the satisfaction of the authority concerned that (a) the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or Director of the company; or (b) he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission, the licensee had not or could not reasonably have had, knowledge of that previous act or omission; or (c) if the act or omission was a continuing act or omission, he had not or could not reasonable have had knowledge of that previous act or omission; or (d) he had used due diligence to ensure that the conditions of the licence or the provisions of the Act or the rules thereunder were observed.

13. It is claimed by the licence holder that neither she nor the person-in-charge or agent or any such employee working with them found to have been guilty of any similar act or omission within 12 months before, the date on which, such mischief alleged and the said fact could have been duly considered by opposite party No.1 while confirming the suspension order dated 29th September, 2022. On a cursory glance of the impugned order at Annexure-15, the Court does not find opposite party No.1 to have dealt with all such aspects dealing with the plea advanced by the petitioner with reference to the provisions of the Act and rules apparently for the reason that the test reports to have confirmed the drugs to be

not of standard quality with one, namely, Telma-AM not to have been manufactured by M/s Glenmark Pharmaceuticals Private Limited. In fact, it is not evident from Annexure-12 and from the impugned decision vide Annexure-15 as to the reasons which prevailed upon them in suspending all the wholesale drug licenses of the proprietress of the petitioner.

14. Furthermore, the Court finds that a plea is also advanced by the petitioner regarding non-compliance of the protocols of the tests applied to the drugs in consonance with Rule 46 of the Rules which provides the manner in which it has to be accomplished from the moment when the sample is collected for scientific analysis. As per the said provision, after the test or analysis has been completed, the Govt. Analyst shall forthwith supply to the Inspector, a report in triplicate in Form-13 of the result of the test or analysis together with full protocols or tests or analysis applied. Under what circumstances, it shall be deemed to be full and sufficient compliance with the requirement of a Rule in respect of the protocols is stipulated in Explanation appended to Rule 46 of the Rules. It is claimed by the petitioner that there is no compliance of Rule 46 of the Rules in relation to the drugs with references to the specific test or analysis mentioned in the official pharmacopoeia indicated in the report received and relied upon. The Court, in view of such a contention advanced, is of the view that opposite party Nos.1 and 2 ought to have considered such a plea before proceeding to suspend the licenses as any such procedure prescribed in Rule 46 of the Rules, if not fully or sufficiently complied with in respect of the protocols of the tests or analysis applied, when it could possibly be a ground seeking exoneration from the criminal prosecution.

15. No doubt, the Licensing Authority has the power to cancel and suspend licenses as per Rule 66 of the Rules, according to which, after giving the licensee an opportunity to show cause why such an order should not be passed stating the reasons therefor may cancel license 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 such licensee has failed to comply with any of the conditions of the licence besides the provisions of the Act or rules made thereunder. On a reading of the aforesaid provision, the Licensing Authority has discretion left to consider cancellation or suspension of licence for such period either in whole or in part in respect of the drugs to which the same is related. According to the Court, when suspension of licence is a harsh measure, the Licensing Authority before taking any such decision shall have to examine a particular case in a given set of circumstances to arrive at a decision, whether, such suspension should be for a specific period and/or either wholly or to an extent in respect of the drug to which such license relates to. The impugned decision at Annexure-12 does not reveal any such consideration to have weighed the mind of opposite party No.1 and also opposite party No.2 while directing suspension of all the licenses by order dated 29th September, 2022. The Court is of the further view that there has been no judicial application of mind by the Licensing Authority, namely, opposite party No.2, while suspending the licenses of the petitioner. In fact, non-

application of judicial mind refers to a situation, where the concerned authority fails to properly examine each and every circumstance of a case while taking a decision. An authority is expected to carefully examine all relevant facts and material evidence keeping in view the legal principles before arriving at a decision either way, in absence of which, it has to be held that there is no application of judicial mind. A decision is made without proper application of mind may be branded as arbitrary meaning thereby that it is not based on reason or logic and lacks independent judgment. It also signifies a casual or superficial approach to a case rather than a thoughtful and deliberate analysis. The consequences as a result would be that a decision made without proper application of mind may potentially be overruled in a judicial review. The Court is of the humble view that the Licensing Authority, for that matter, shall have to examine all such aspects before taking any such decision towards suspension or cancellation of license as the case may be and in the case at hand, additionally, it shall have to be in conformity with Rule 66 of the Rules. It is to be reiterated that there has been no justifiable reason assigned or coming forth from the material on record, which may said to have propelled opposite party No.2 to suspend all the licenses of the petitioner and not the one in respect of the alleged drugs. Any such decision towards suspension of all the licenses, in the considered view of the Court, lacks logic and rationality, when opposite party No.2 has the authority to consider suspending one instead of all three. The condition of such licenses only if contravened or any provision of the Act or rules found to be violated with impunity with serious consequences, the decision to cancel the licenses may be justified. Each and every case for cancellation or suspension of licence is to be independently examined with reference to the mischief committed and not that, the Licensing Authority is to blindly go for it influenced by the analysis reports received by him. A decision to even to suspend a licence must be taken with a lot of care, caution and circumspection and not in a casual manner or mechanically.

16. In Techno Prints (supra), it has been held and observed that a final decision by an order is not to travel beyond the scope of the show cause notice. It is alleged by Mr. Das, learned counsel for the petitioner that it has taken place and is clearly visible from the materials on record. The Court is of the view that the decision to suspend the licenses must be confined to the reply received on the basis of a show cause notice. At the cost of repetition, it is to remind that show cause notice was issued in respect of one of the drugs and not the other and that too when, in respect of the said drug, the analysis report was still to arrive. Whether the drugs are spurious or not of standard quality, by barely considering the show cause notice dated 16th September, 2022 in respect of Telma-40, it may be justified to claim that the decision has apparently travelled beyond the scope of the notice. A similar view has been expressed by the Allahabad High Court in Samsung India Electronics Private Limited (supra), wherein, it is held that any attempt by an Authority to expand the scope of enquiry beyond what is articulated in the show cause notice would constitute violation of principles of natural justice.

17. Taking into account the case laws discussed, it has to be held that all such aspects have not been looked into and examined at threadbare by learned authorities below before directing suspension of licenses of the proprietress of the petitioner. It is to be borne in mind that taking away licenses at one go is a punitive action having serious consequences. Such a decision must be preceded by compelling circumstances and not in normal course of action, a Licensing Authority shall have to deal with cancellation or suspension of licence with utmost seriousness regard being had to the extenuating as well as aggravating circumstances. But, without examining each and every aspect of a case with proper judicial application of mind, any decision as a result is certainly to fall flat and susceptible to review. That apart, to debar a licence holder to run the business entirely even by cancellation of licence, in the humble view of the Court, is like leaving him to die, while still alive and therefore, the Licensing Authority must have to be extremely cautious in taking a decision in that regard. Merely on the basis of a report received and without application of judicial mind to the materials on record and plea of the licensee, it is not expected from an authority having powers to exercise in cancelling or suspending licenses, which is certainly an onerous responsibility, hence, not to be lightly taken, instead is needed to be discharged with great sincerity. Taking a decision overwhelmed by the analysis reports is not advisable. A decision to cancel or suspend licence must be demonstrated in a manner that leads to an impression about the exercise being undertaken and followed by the action to be justified with no other conclusion one could have ever reached. Having said that, the Court reaches at a conclusion that opposite party No.2 was not right in cancelling all the licenses of the petitioner, inasmuch as, the alleged drugs relate to licence in Form-20-B and not Form-21-B and From-20-G and it has again been confirmed by opposite party No.1 without any justification, therefore, the cancellation of said two licenses shall have to be restored. At the same time, the Court is of the further conclusion that the plea advanced by the petitioner with reference to the materials on record and in accordance with the provisions of the Act and Rules is needed to be freshly examined by opposite party No.2 vis-à-vis drugs licence in Form-20-B as all such aspects discussed hereinbefore have not been attended to and dealt with.

18. Hence, it is ordered.

19. In the result, the writ petition stands disposed of with the direction to opposite party No.2 to revoke the order of suspension with respect to the drug licenses in Form-21-B and From-20-G and restore the same forthwith and immediately, to consider the plea of the petitioner as regards revocation of the other license in Form-20-B and thereafter, to take a decision thereon or in the alternative, to consider suspension either wholly or only vis-a-vis the subject drugs alleged to be found ‘not of standard quality’ and ‘spurious’ as the case may be concluding the above exercise upon providing an opportunity of hearing to the petitioner followed by a reasoned order at the earliest and preferably within six weeks from the date of communication of this judgment regard being had to the observations made herein above and the settled position of law. As a necessary

corollary, the impugned orders as at Annexures-12 & 15 are hereby set aside with the matter restored to the file of opposite party No.2 for compliance of the directions as aforesaid within the stipulated period as has been fixed.

20. In the circumstances, however, there is no order as to the costs.

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