

(2020) 04 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5610 Of 2020

M/S Samrat Laboratories

APPELLANT

Vs

State Of Bihar And Others

RESPONDENT

Date of Decision : 22-04-2020

Acts Referred:

Citation : (2020) 04 PAT CK 0002

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Satyabir Bharti, Vikash Kuma

Final Decision : Disposed Of

Judgement

Vikash Jain, J

1. The present writ petition has been received in this Court by email and assigned to this Bench by Hon'ble the Chief Justice as an extremely urgent matter for hearing through video conferencing.

2. A number of defects have been pointed out by the stamp reporter, which remain to be removed. Learned counsel for the petitioner undertakes that all the defects shall be removed without delay immediately after the present lockdown ends. Learned counsel for the State expresses that he has no objection if the defects are removed as proposed and the matter is thus taken up on merits in view of the stated urgency.

3. Heard Mr. Satyabir Bharti, learned counsel for the petitioner and Mr. Vikash Kumar, SC-11 for the State.

4. The present writ petition has been filed for the following reliefs as formulated by the petitioner -

"(i) To issue an appropriate writ in the nature of mandamus, directing the respondent no. 3, namely, the Drug Controller-cum-Chief Licensing Authority,

Directorate of Health Services, Government of Bihar, to issue necessary approval for manufacture of Hand Sanitizers by the petitioner at its factory, in compliance of the directives issued by the Central Government, to grant necessary permission to manufacture Hand Sanitizers within a period of three days from the date of application, in order to meet the urgent and immediate requirement of Sanitizers in the country including the State of Bihar, which is needed to control the outbreak of COVID-19 pandemic in our country;

(ii) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."

5. The brief facts of the case according to the petitioner are that the petitioner is a proprietary concern and holder of license no. BR43(N)AL/2012 in Form No. 25 prescribed under the Drugs and Cosmetics Act, 1940 for manufacture of various products as specified in the schedule to the license, issued by the State Drug Controller-cum-Chief Licensing Authority, Bihar, Directorate of Health Services (respondent no. 3). The license initially issued on 12.03.2012 for a period of five years has been renewed upto 11.03.2022. Condition no. 3 of the said license reads as follows -

"3. If the licensee wants to manufacture for sale additional items of drugs not included above he should apply to the Licensing Authority for the necessary endorsement as provided in rule 69(5). This license will be deemed to extend to the categories so endorsed."

6. With the outbreak and spread of COVID-19 pandemic, an emergent situation has developed globally. With a view to take immediate steps for control and spread of the corona virus, the Directorate General of Health Services, Government of India, New Delhi in its letter dated 17.03.2020, noticing that masks and hand sanitizers had been declared as essential commodities, directed all State/UT Drug Controllers to monitor the quality and availability of hand sanitizers within their respective jurisdictions. Directions for expeditious grant of licenses for manufacture of hand sanitizers were also issued in order to meet the increased demand of hand sanitizers needed to battle the corona virus. A further letter was issued by the Directorate General of Health Services, New Delhi on 18.03.2020, inter alia, requesting the State/UT Drug Controllers to process applications for grant of manufacturing licenses for manufacture of hand sanitizers on priority basis within three days of application. Another enabling step in this direction was taken by the Government of India in its Gazette notification dated 19.03.2020, declaring the alcohols as raw materials used for manufacture of hand sanitizer to be essential commodities. By letter dated 19.03.2020 addressed to all the Chief Secretaries of the State Governments, the Government of India through Department of Food & Public Distribution advised for enhanced production of hand sanitizers and their availability to consumers.

7. It is in this backdrop that the petitioner by application dated 16.03.2020 addressed to the State Drug Controller -cum-Chief Licensing Authority, Bihar,

Directorate of Health Services (respondent no. 3) sought permission to manufacture Hand Sanitizers, Anticeptic Hand Wash, Disinfectant & Germicide Liquid etc. in order to meet the urgent demand for such products. This was followed by another application dated 23.03.2020, seeking inclusion of additional formula for manufacture of hand sanitizers and for which the requisite fee was also deposited through challan. Pursuant to such applications, the State Drug Controller by letter dated 24.03.2020 directed for inspection of the petitioner's premises. Accordingly, the Assistant Drug Controller (respondent no. 4) carried out the required inspection and prepared an inspection report which was forwarded to the State Drug Controller-cum-Chief Licensing Authority, Bihar, Directorate of Health Services (respondent no. 3) on 28.03.2020, recommending grant of license for manufacture of hand sanitizers using either Ethyl Alcohol/Ethanol 80% v/v or Isopropyl Alcohol 75% v/v as a primary raw material in pack size of 50ml, 100ml, 200ml, 500 ml, 1000ml and 5000 ml.

8. Learned counsel for the petitioner submits that in view of the urgency for stepping up production of hand sanitizers to combat the outbreak and spread of coronavirus in the country and more particularly in the State of Bihar, the respondent no. 3 ought to have acted expeditiously in considering the request of the petitioner for grant of license to manufacture hand sanitizers and for inclusion of additional formula for manufacture of hand sanitizers, moreso in view of the repeated directions and advisories of the Central Government referred to above. Despite considerable time having elapsed after filing of the petitioner's applications, no final decision appears to have been taken in the matter even though only a three-day period for disposal of such applications was contemplated in terms of the letter dated 18.03.2020 issued by the Directorate General of Health Services, Government of India, New Delhi.

9. Learned counsel for the State submits that no counter affidavit could be filed within the short time available, but however, oral instructions have been received on the basis of which it is submitted that the applications of the petitioner are under active consideration of the respondent no. 3 and a final decision is expected to be taken very shortly within a day or two.

It is submitted that the State authorities are very mindful of the urgency of the situation and are taking all necessary steps to control the corona virus.

10. Having heard the parties and on consideration of the materials on record, this Court is of the view that the petitioner's applications for grant of permission for manufacture of hand sanitizers and for inclusion of additional formula for manufacture of hand sanitizers in the present context of COVID- 19 pandemic are certainly urgent matters, particularly in the light of various directions and advisories of the Central Government as referred to above. It would appear that the petitioner's premises have already been inspected and inspection report placed before the State Drug Controller-cum- Chief Licensing Authority (respondent no. 3) on 28.03.2020 with certain recommendations. This Court also takes note of the submission of learned counsel for the State that the matter is

under active consideration of the authorities and a final decision is likely to be taken within a day or two. Regard may also be had to the order dated 18.04.2020 passed in CWJC No. 5608 of 2020 (M/s Fantasy Drugs Private Limited vs. The State of Bihar and ors.), by which a co-ordinate Bench of this Court has interfered in a matter involving a prayer for a direction to the authorities not to withhold allotment of Ethanol, a base ingredient for manufacture of hand sanitizers. The Court took judicial notice of the fact that demand of hand sanitizers is increasing day by day and there is a shortage of hand sanitizers across the country.

11. In the above circumstances, the writ petition is disposed of with a direction to the State Drug Controller-cum-Chief Licensing Authority, Bihar, Directorate of Health Services (respondent no. 3) to consider and the petitioner's applications dated 16.03.2020 and 23.03.2020 (Annexures 8 series and 9, respectively) filed for grant of license to manufacture hand sanitizers and for inclusion of additional formula for manufacture of hand sanitizers respectively, and dispose of the same taking a final decision by a reasoned and speaking order in accordance with law expeditiously and in any event latest by 24.04.2020. Such order shall be communicated forthwith by the respondent no. 3 to the petitioner by email at the email address stated on the aforesaid applications of the petitioner.

12. Let a copy of this judgment be transmitted to learned counsel for the petitioner and learned counsel for the State without delay, preferably today itself.