

(2007) 10 AHC CK 0122

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54602 of 2003

Pushpendra Medical Stores and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Evidence Act, 1872 — Section 114(G)

Citation : (2007) 10 AHC CK 0122

Hon'ble Judges : V.C. Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : Arvind Srivastava, for the Appellant; Ramanand Pandey, for the Respondent

Judgement

Amitava Lala, J.—This writ petition has been filed challenging the order dated 2nd June, 2003 passed by the District Medicine Licensing Authority, Deoria, for obtaining appropriate order with regard to renewal of petitioner's drug licence for the retail shop.

2. Previously, a writ petition was filed before this Court, being Civil Misc. Writ Petition No. 6352 of 2003, whereunder a Division Bench of this Court was pleased to pass an order on 11th February, 2003 directing the authority to consider the case of the petitioner and pass a reasoned order within the time specified thereunder. Pursuant to such direction, the order impugned has been passed. No counter affidavit has been filed by the State in spite of direction given by this Court in the year 2004.

3. The petitioner's case is that his drug licence for carrying on retail shop was renewed up to 31 st December, 2001 and on account of death of his father an application for further renewal was made on 28th January, 2002. Although, the necessary challan form was given to the respondent No. 3. who had to make appropriate endorsement thereon and then returned it to the petitioner for making requisite deposit, yet the same was not done and it was kept pending by the respondent No. 3 with him to harass the petitioner. Against this background,

when the direction aforesaid was given by the Court to consider the case and pass a reasoned order, the impugned order has been made but without assigning any reason. Since the amount has not been deposited, the consideration was not made, in this context, we have gone through the Drugs and Cosmetics Act, 1940 with regard to grant of such licence under the Act. However, the position is not clear whether the same is required for a retailer. Then we wanted to go through the Drugs and Cosmetics Rules, 1945 (for short "the Rules") and found that under Rule 61 (1) and (2) of the Rules, licence under Form 20B and 21B is required to be issued for sale of drugs by a retailer and necessary steps are required to be taken under Rule 63 of the Rules, which reads as under:

63. Duration of licence: An original licence or a renewed licence to sell drugs, unless sooner suspended or cancelled, shall be valid up to the 31 st December of the year following the year in which it is granted or renewed:

Provided that if the application for renewal of licence in force is made before its expiry or if the application is made within six months of its expiry, after payment of additional fee, the licence shall continue to be in force until orders are passed on the application. The licence shall be deemed to have expired if application for its renewal is not made within six months after its expiry.

4. A bare perusal of Rule 63 of the rules makes it crystal clear that if the application is made within six months of its expiry, after payment of additional fee, the licence shall continue to be in force until orders are passed on the application, when the case of the petitioner is that the application for renewal was made immediately after expiry of the licence but for unknown reasons the challan form is not verified & duly endorsed and not returned back to the petitioner. In such circumstances, it is very difficult to construe that there was laches on the part of the petitioner in making the application for renewal. In any event it is not desirable that in spite of appropriate direction in the earlier writ petition for passing a reasoned order, a cryptic order will be passed by the authority without assigned any reason.

5. That apart, no affidavit has come forward as yet on the part of the State, it is well settled law as laid down in Bux Singh Vs. Joint Director of Consolidation and Others, ; Juggi Lal Kamla Pat Vs. Ram Janki Gupta and Another, ; State of Gujarat Vs. S. Tripathy and Others, ; M/s. J.K. Cotton Spinning and Weaving Mills Company Ltd. and Ors. 1999(82) FLR 709 that if no affidavit in rebuttal is filed and the averments made in the affidavit are not controverted then the said averments must be accepted as true and correct drawing the presumption in favour of the petitioner in terms of Section 114 Illustration (G) of the Evidence Act. In the absence of counter affidavit, this Court is left with no other option but to accept the averments made in the petition to be correct and true.

6. In view of the discussions made above, in our view. the writ petition deserves to be allowed and accordingly allowed. Consequently, the impugned order dated 02.06.2003 is quashed with a. direction upon the authority concerned to consider

the representation of the petitioner afresh upon giving fullest opportunity of hearing to the petitioner and pass a reasoned order thereon within a period of one month from the date of presentation of a certified copy of this order along with a representation by the petitioner. For the purpose of effective adjudication a copy of the writ petition along with its Annexures can also be treated as part and parcel of such representation.