
(2003) 09 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 11 of 2001

R. Lianthanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 273

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : C.V.L. Auva, for the Appellant; Helen Dawngliani, AGA, for the Respondent

Judgement

S.K. Kar, J.—The petitioner Shri R. Lianthanga is the Proprietor of M/s. City Drugs Stores- Aizawl. This petition has been presented by him being aggrieved by order passed by Drugs Controller, Mizoram, on 7.11.200.0 under Rule 66 of the Drugs and Cosmetics Rules, 1945 cancelling his Drug Licence.

2. The petitioner contends that he was issued Drugs "Licence No. AD/ 109 & 110 (Form 20-A, 21-A) and No. AD/144 & 153(20-B, 21-B) on 14.5.1973 and it was being renewed from time to time and last renewal was done for the period of 1.1.1999 to 31.12.2000. That no list of the medicines was furnished to the petitioner in connection with Drugs which cannot be legally sold to the customers.

3. The further contention of the petitioner is that he is qualified to sale drugs having requisite certificate and was selling drugs for the last 27 years but then, without any valid reasons the impugned order was passed on the basis of false allegations and hearsay evidence, that too without giving him appropriate opportunities to show cause. That the show cause notice issued was invalid being signed by Assistant Drugs Controller instead of Drug Controller. That the cancellation of the Drugs Licence was arbitrary and without jurisdiction etc.

4. The respondents State of Mizoram, Drugs Controller and the corresponding

personnel in the Health Department filed their counter-affidavit contending, inter-alia, that the petitioner was granted restricted type of Drugs Licence in Form 20-A and 21-A and he is not permitted to sale drugs under Schedule-H. That the petitioner has violated the provisions of Section 18(c) of Drugs and Cosmetic Act by procuring and selling Schedule-H Drugs. That list of medicines covered by respective forms of licence are always enclosed at the time issuing licence or renewal of the same. That inspite of warning the petitioner was violating the provision of Drugs and Cosmetic Act and the statutory rules and there were complaint from the general public which were investigated by the Drugs Inspector and the report of the Drugs Inspector revealed violation of provisions of the Drugs and Cosmetic Acts, relevant rules and orders. That the reply to the show cause notice issued to the petitioner was found to have contained baseless explanation and accordingly was not accepted. That the Assistant Drugs Controller who issued the show cause notice was duly empowered by the Government Notification, dated 16.12.1997. That ignorance of law has no excuse and accordingly the Drugs Licence was cancelled for violating the provision of relevant acts and rules.

5. I have heard both sides and perused the documents attached to the affidavit and counter affidavit in the form of Annexures. Rule 66 of the Drugs and Cosmetic Rules, 1945 provides that Licensing Authority may- after giving, the licensee an opportunity to show cause why such order should not be passed by an order in writing stating the reasons therefore, cancelled a licence issued. However, the provision to Rule 66 under Clauses (a)(b)(c) and (d) makes it abundantly clear that Licensing Authority cannot cancel the licence if provisions of any of these clause are attracted in the case of the contemplated action. In other words, there are provisions in favour of the person, against whom the action is contemplated, to raise "plea of ignorance" and accordingly he can show cause against the contemplated action.

6. Sub-clause (2) of Rule 66 goes as follows :-

"(2) Licensee whose licence has been suspended or cancelled may, within three months of the date of order under Sub-rule (1), prefer an appeal against that order to the State Government, which shall decide the same."

Therefore, there is clear provision in the rules in favour of the person, aggrieved by action of the Licensing Authority, to prefer an appeal against any impugned order of Drug Controller to the State Government and law is well-settled that without exhausting all the remedies, whether statutory or otherwise, the writ jurisdiction of the High Court cannot be invoke by a person. It was submitted on behalf of the respondents that on this ground alone this writ petition cannot be entertained. There cannot be any second opinion that remedy under Article 226 of the Constitution of India may be sought only as the ultimate step to vindict justice, it is being an extraordinary power.

7. One of the objections taken by the petitioner is that show cause notice to him

was not issued by competent authority as the notice in question was issued by the Assistant Drugs Controller. It was replied by the respondents by stating that Assistant Drugs Controller was duly empowered by the Government to take action. Rule 59 clearly gives such power of appointing Licensing Authority by the State Government and Rule 60 provides that Licensing Authority may delegate its power by an order in writing to any other person under its control.

8. The petitioner has complied with the requirement of the notice and submitted his explanation in response to the notice. Therefore, it will not be appropriate to challenge the issue of "show cause notice" at this belated stage. The pleadings of the petitioner, on a reading the writ petition, appears of the casual type and inconsistent. There is a clear admission in the show-cause reply (Annexure - 4) that there might have been some non-compliance of the provision of the Act and Rules and in the show cause notice itself the writ petitioner undertook to be excused for the mistakes he committed in- advertently. It may be conceded for the sake of argument that the impugned order dated 7.11.2000 (English translation) may not be in strict compliance of the letters and spirit of Rule 66 but then in that case the remedy lies in preferring an appeal before the State Government. Rule 66 provides that any order cancelling the Drugs licence should state reasons therefore. The reasons recorded in the impugned order, although it is there, it is cryptic in nature.

9. In the results, without entering into the further discussions, I find that writ petition is pre-matured and not presented after exhausting of statutory remedies.

10. The petitioner will be permitted to present his appeal under Clause (2) of Rule 66 of Drugs and Cosmetic Rules, 1945 within three months from the date of this order. It is permissible to exclude the period spent litigating in this petition from 6.2.2001 (date of petition) till today (date of disposal). If still dissatisfied he may approach the court for the second time.

11. Petition stands disposed of no costs.