
(1996) 01 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 6383 of 1995

Raj Ausdhalaya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-1996

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 156, 83, 84

Citation : (1996) 2 PLJR 53

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Heard.

2. The present writ application has been filed against the order dated 19th June, 1995 passed by the Commissioner in Miscellaneous Case No. 68/1994 rejecting the prayer of the Petitioner for renewal of license for the year, 1988-89, 1989-90 and 1990-91 under the provision of Medicinal and Toilet Preparation (Excise Duties) Act and the rules framed there under (hereinafter referred to as the Act and the Rules).

3. This is the fifth time that the Petitioner has come to this Court in the following circumstances.

The Petitioner established the private firm in 1987 for manufacturing Ayurvedic medicines. It was granted license in Form 25D in the year, 1987, under the provisions of the Drugs and Cosmetics Act and the rules framed there under (hereinafter referred to as Drugs Act and Drugs Rules) for manufacturing Ayurvedic medicines. Thereafter, he applied for license under Rule 83 of the rules and the license was granted for the year, 1987. Thereafter, he applied for renewal of the license for the aforesaid periods which was rejected by the Excise Commissioner and communicated to him by letter dated 11.12.90 issued by the Deputy Commissioner of Excise of Patna on three grounds:

(i) the licensee did not possess the valid Drug License for the period of 1.1.89 to 9.5.89.

(ii) the renewal of drug license for the period of 10.5.89 to 31.12.90 was for different place that is mentioned in the earlier license.

(iii) the working or manufacturing unit was not satisfactory.

4. The Petitioner preferred an appeal under the relevant provision before the appellate authority (Minister of Excise) and when the said appeal was not disposed of, the Petitioner came to this Court in C.W.J.C. No. 677/1991 which was disposed of on 13.5.91 with a direction to the appellate authority to dispose of the appeal within a period of two months from the date of the receipt of a copy of the order. The appeal was not disposed of in terms of the direction of this Court and this Petitioner again moved to this Court in C.W.J.C. No. 7596/1991 and the matter was finally disposed of on 13.4.93 and this Court directed that the appeal be heard by the Secretary of the Excise Department instead of the Minister of Excise. In pursuance of the aforesaid direction the Commissioner of Excise (Respondent No. 2) by order dated 3/4.5.93 dismissed the appeal, primarily on two grounds that the license under the Drugs Rules cannot be renewed because of non-furnishing of certain required information and the application for renewal of license under the Drugs Rules for the period of 1993-94 has not been submitted within the prescribed time as a result of which the license has elapsed in terms of the provisions contained in Rule 156 of the Drugs Rules.

5. The Petitioner has challenged the aforesaid order of the Excise Commissioner in C.W.J.C. No. 7390/93 and on 6.5.94 this Court quashed the aforesaid order and the matter was again sent to the Excise Commissioner to consider the prayer of the Petitioner to renew the license in the light of the observation made in the said order. Again the Excise Commissioner by order dated 24.5.94 rejected the application of the Petitioner on two grounds, namely, that the application for renewal of license under the Drugs Act for the year, 1991-92 was not in proper form and no application for renewal of license was filed within time and as such the license granted under the Drugs Act and the Rules expired as a result of which no license could be granted under the Act and the Rules. This order was again challenged by the Petitioner in C.W.J.C. No. 6470/94 and this Court by order dated 29.11.94 again quashed the aforesaid order and directed to consider the matter (sic) as the aforesaid order has been (sic) without application of mind. Thereafter, the impugned order has been passed on the ground that the functioning of the Unit was not satisfactory.

6. A counter affidavit has been filed on behalf of the Respondent State wherein the ground for cancellation of license as stated in the impugned order has been justified and it has been stated that application for renewal of license of the Petitioner has been rejected on the ground of non-satisfactory performance of the Petitioner.

7. Learned Counsel for the Petitioner has submitted that the ground given for rejection of license this time is based on no evidence and is arbitrary and this shows that the licensing authority is determined not to renew the license even though no ground exists for rejecting the claim for renewal of the license. It was also stated that the enquiry report of the Drugs Inspector dated 16.8.90 contained in Annexure-1 shows that the performance of the Petitioner was found satisfactory at the relevant time and the same falsifies the ground for non-renewal of license.

8. It is an admitted position that a valid license under the Drugs Act and the Rules is a condition precedent for grant of license under the Act and the Rules. The license under the Drugs Act and the Rules is granted under Form 25D and is renewed in Form 26D. According to the said provision an original license in Form 25D and the renewed license in Form 26D shall be valid up to 31st December of the following year in which it is granted or renewed unless which is suspended or cancelled. However, if an application for renewal of license is made before its expiry or within one month of its expiry or if an application is made within three months of its expiry after payment of additional fee, the license shall continue to be in force until orders are passed on the application. Rule 83 of the rules contains a provision for making an application for grant of license under the Act and the license is granted under Rule 84.

9. As stated above, from the impugned order it appears that the only ground given for cancellation of license is that working or performance of the Petitioner's firm was not found satisfactory. The said ground for coming to that conclusion is that the Petitioner's firm has not manufactured the medicines upto its production capacity. As stated above, Annexure-1 is the report of the Drug Inspector which shows that the performance of the Petitioner was found satisfactory in the year, 1990. No provision has been pointed out by learned Counsel for the State under the Act and the Rules to show that manufacturing of medicines below that production capacity is a ground for non-renewal of license nor any provision has been brought to my notice that minimum quantity of medicines that has to be manufactured by the licensee before a license is renewed. In absence of any such provision, in my view, renewal of license cannot be refused only on the ground that the Petitioner has manufactured the medicines less than the production capacity. When the authority is vested with such administrative power then the same is to be exercised according to law and not in an arbitrary and capricious manner.

10. After considering the aforesaid facts, I am of the view that the ground given for rejection of application for renewal of license is arbitrary as that is neither based on any factual matter nor supported by any statutory provisions under the Act and the Rules. Accordingly, the impugned order is set aside and Excise Commissioner is directed to consider the question of grant of license to the Petitioner according to law.

11. In the result, the application is allowed.