

(2011) 07 MAD CK 0503

In the Madras High Court

Case No : Writ Petition (MD) . No. 10757 of 2005

S. Hammed Fathimal

APPELLANT

Vs

The Assistant Director, Drugs Control

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 62(B), 62A, 62A(1), 65(A), 65(B)

Citation : (2011) 07 MAD CK 0503

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V. Meenakshisundaram, for the Appellant; S. Bharathy, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner being aggrieved by the impugned order, dated 22.09.2004 passed by the Assistant Director of Drugs Control, Tirunelveli Zone, prays for issuance of writ in the certiorari, with consequential writ in the nature of mandamus for issuing Drugs licence to the Petitioner to run a pharmaceutical outlet.

2. The Petitioner is a tenant of premises, having Door No. 175, Azad Road, Melapalayam belonging to one Tmt. Mariam Beevi. The premises were leased out to the Petitioner under the lease agreement, dated 12.05.1993. The Petitioner applied to the Respondent for grant of licence in Form-19 on 15.09.2004. The necessary fees was also deposited. The Petitioner on the basis of the intimation sent by the Respondent, spent Rs. 1,00,000/-[Rupees one lakh only] towards installation of racks and other infrastructures for making the premises, fit for retail medical shop.

3. The Respondent did not recommend the issuance of the licence, merely on the ground that there were litigations between the landlord and the tenant.

4. The learned Counsel for the Petitioner challenges the impugned order, by

placing reliance on Rule 62(B) of the Drugs and Cosmetics Act, 1945, which reads as under:

62-B. Conditions to be satisfied before a licence in Form 20-A or Form 21-A is granted-(1):

A licence in Form 20-A or Form 21-A shall not be granted to any person, unless the authority empowered to grant the licence is satisfied that the premises in respect of which the licence is to be granted are adequate and equipped with proper storage accommodation for preserving the properties of drugs to which the licence applies:

Provided that this condition shall not apply in the case of licence granted to itinerant vend Ors.

(2) In granting a licence under Rule 62-A the authority empowered to grant it shall have regard to-

(i) the number of licences granted in the locality during one year immediately preceding; and

(ii) the occupation, trade or business carried on by such applicant;

Provided that the licensing authority may refuse to grant or renew a licence to any applicant or licensee in respect of whom it is satisfied that by reason of his conviction of any offence under the Act or these Rules or the previous cancellation or suspension of any licence granted to him, he is not a fit person to whom a licence should be granted under this Rule.

(3) Any person who is aggrieved by the order passed by the licensing authority is Sub-rule (1) may, within 30 days from the date of the receipt of such order, appeal to the State Government and the State Government may, after such enquiry into the matter as it considers necessary and after giving the Appellant an opportunity for representing his views in the matter, make such order in relation thereto as it thinks fit.

5. The learned Counsel for the Petitioner contends that a reading of Rule 62(B), shows that there is no bar to grant of licence to run a retail outlet in the tenanted premises. Therefore, the impugned order is contrary to the statutory rule.

6. The learned Counsel for the State, on the other hand, placed reliance on Rule 65(B), and contended that it is within the jurisdiction of the Authorities under the Act, to call for additional information and take that into consideration, to decide, as to whether the licence is to be granted or not.

7. The contention of the learned Counsel for the State, therefore, is that once it was proved on record, that there is litigation between the Petitioner and his landlady, the Respondent rightly did not recommend the case of the Petitioner, for issuance of licence asked for.

8. Section 65-A of the Drugs and Cosmetic Rules, 1945 reads as under:

65-A. Additional information to be furnished by an applicant for licence or a licensee to the licensing authority:

The Appellant for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the licensing authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, or any other relevant matter which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee while applying for or after obtaining the licence, as the case may be].

9. The learned Counsel for the Petitioner pointed out, that the Rent Control applications moved by the landlady stands dismissed by the learned Rent Controller, as well as Appellate Authority. Though, the landlady has filed revision in the High Court, which it is yet to be numbered.

10. The very basis for non-consideration of the claim of the Petitioner, is No. more in existence, as the petition for eviction under the Rent Act, stands dismissed.

Even otherwise, the pendency of litigation cannot be a ground to deny the licence.

11. The reading of the rules shows that a person is entitled to licence, to run a business in the tenanted premises.

12. Consequently, the writ petition is allowed, impugned order is set aside, and the case is remitted back to the 1st Respondent, to consider the application of the Petitioner in terms of the Rule 62(B) and 65(A) of the Drugs and Cosmetics Rules 1945, by taking into consideration, the orders passed by the authorities under the Act.

13. The decision be taken within a period one month of the date of receipt of certified copy of this order. No. costs.