

(2009) 10 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 10789 of 2009

Satyam Distributors

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 65(5), 66

Citation : (2010) 1 PLJR 472

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ashwani Kumar Singh and Dhananjay Kumar, for the Appellant;
Prabhat Kumar Singh, S.C. 21, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the State.

2. Petitioner is a wholesaler of drugs pursuant to a drug licence issued by the State Drug Controller - cum - Chief Licensing Authority, Bihar, Patna. He is assailing the order dated 8.7.2009 (Annexure 12) wherein his drug licence has been cancelled with reference to the memo of charge dated 12.5.2009 (Annexure 8). He is further assailing the appellate order dated 7.9.2009 communicated to the Petitioner under memo No. 515 dated 8.9.2009 (Annexure 19) wherein the appeal filed against the cancellation order was also dismissed. The charge memo dated 12.5.2009 was issued pursuant to an inspection report dated 2.5.2009 (Annexure 7). It is evident from the charge memo that charge Nos. 2 to 6 relate to sale of the different drugs by the petitioner at a price which was over and above the maximum retail price (for short M.R.P.) and thereby the petitioner is alleged to have violated the provisions contained in Drugs Price Control Order issued in terms of the provisions contained in Essential Commodities Act. Charge Nos. 1, 7, 8 and 9 relate to violation of the Drug and Cosmetics Act and the Rules framed thereunder.

3. It is submitted on behalf of the petitioner with reference to charge Nos. 1, 8 and 9 that perusal thereof would indicate the allegation therein are not so

serious and even assuming the allegations constituting charge Nos. 1, 8 and 9 to be true the licence could not have been cancelled. As regards charge No. 8, it is submitted that the allegation constituting the charge is that at the time of inspection, on 2.5.2009 the current (last) cash memo was not produced before the Inspection Team, which fact has been noted in paragraph 7 (VII) of the inspection report. In this connection it is pointed out that on the date of inspection i.e. 2.5.2009, by the team of inspection no sale was effected as such the last cash memo of the earlier date was produced before the Inspection Team and has been noted in the inspection note. The other two charges, namely, charge Nos. 1 and 9 that the authorized person was not present at the time of inspection as also the person present at the time of inspection did not sign the inspection report, are such for which licence could not have been cancelled. In this connection it is further submitted that on the date of inspection i.e. 2.5.2009 while the business premises of the petitioner was being cleaned in presence of the petitioner, he suffered illness and left the shop premises instructing his staff to close the shop after dusting/sweeping of the shop was over in the meanwhile the Inspecting Team arrived and conducted the inspection. Under the circumstances the allegation that the petitioner proprietor, was not present as also person present refused to sign the inspection note should not be taken seriously to cancel the licence, as in terms of provisions contained in Rule 66 of the Drugs and Cosmetics Rules, 1966 (hereinafter referred to as "the Rule") for such lapses the punishment of cancellation of licence shall be too harsh. As regards charge No. 7 it is submitted that the person available in the shop at the time of inspection failed to produce purchase receipt with regard to the drug referred to in the charge No. 7 manufactured by Sun Pharma, Gujrat, purchased by the petitioner under batch No. JK 8409 thereby the petitioner is said to have violated Rule 65(5)(III)(I) of the Rules. In this connection it is pointed out with reference to the show cause reply filed by the petitioner that he had not purchased any injection Vecaron 4 mg, Batch No. JK8409 manufacturing date 7/2008, expiry date 6/2011, manufactured by Sun Pharma, Gujrat and person present in shop at the time of inspection could not have produced the purchase receipt of the said medicines before the Inspecting Team. Learned Counsel for the State in this connection with reference to the inspection report Annexure 7 submitted that there appears to be mistake in the memo of charge as regards charge No. 7, for Batch No. JK 81409, Batch No. 8409 has been typed, when such submission was made by the counsel for the State, this Court asked the State Counsel whether corrigendum has been issued rectifying the mistake. Learned State counsel fairly submitted that no corrigendum has been issued rectifying the mistake about the batch number incorporated in charge No. 7.

4. With regard to charge Nos. 2 to 6, the learned Counsel for the petitioner submitted that allegation of charging price beyond the M.R.P. from the Superintendent of the Patna Medical College and Hospital (for short PMCH) is not correct during the period of supply the M.R.P. was reduced by the manufacturer without serving Form V on the petitioner, however, when the petitioner learnt

about the reduction of M.R.P., he immediately informed the authorities of the PMCH on 3.4.2009 vide Annexure 4 in response where to the authorities of the PMCH directed him to deposit the difference amount under instruction dated 8.4.2009 (Annexure 5). In compliance where to the petitioner deposited the amount under chalan dated 30.4.2009 (Annexure 6) and brought to the notice of the Superintendent, PMCH, as also to the Drug Controller that the difference amount has already been deposited in the treasury. It appears after the deposit of the difference amount the business premises of the petitioner was inspected on 2.5.2009 and the inspection report is contained in Annexure 7.

5. Learned Counsel for the petitioner states that the authorities were required to have considered the bona fides of the petitioner that he himself under letter dated 3.4.2009 informed the Superintendent, PMCH about the fact that he under some misconception charged price beyond the M.R.P. and the difference amount has been deposited and taking a lenient view of the matter cause shown by him be accepted and matter be closed.

6. The State counsel has opposed the aforesaid submissions, he states that from the letter of the Superintendent, PMCH, dated 8.4.2009 (Annexure 5) it is not evident that the direction to deposit the difference amount has been issued at the request of the petitioner rather the same has been issued on the basis of information derive from the medical store, such submission is noticed and rejected, as it is evident from the conjoint reading of the Annexures 4 and 5 that the Superintendent, PMCH, having referred Annexure 4 to the Medical Store and being satisfied that petitioner charged price more than the M.R.P. under some misconception under letter dated 8.4.2009 (Annexure 5) directed the petitioner to deposit the difference amount which should have been considered by the Drug Controller while considering the show cause reply dated 20.5.2009 (Annexure 9) as also the supplementary show cause dated 25.5.2009 (Annexure 11).

7. Having heard the learned Counsel for the petitioner and the State as also having perused the impugned order wherein drug licence of the petitioner has been cancelled, I am of the view that the Drug Controller has not considered the cause shown by the petitioner that he was not aware about the reduced M.R.P. on account of the failure of the manufacturer to serve Form V indicating the reduced M.R.P. and price above the M.R.P. was charged from the Superintendent, PMCH but no sooner such mistake was discovered by the petitioner, he himself under letter dated 3.4.2009 (Annexure 4) informed the Superintendent, PMCH, under taking voluntarily to refund the difference amount which request of the petitioner was considered by Superintendent, PMCH, after Superintendent confirmed such fact from the medical store as would be evident from the letter dated 8.4.2009 (Annexure 5). In compliance of the said instruction the difference amount was actually refunded on 30.4.2009 vide chalan dated 30.4.2009 (Annexure 6) annexed with this petition. In the circumstances I am of the opinion that the impugned cancellation order dated 8.7.2009 (Annexure 12) as also the appellate order dated 7.9.2009 communicated to the petitioner vide

memo No. 515 dated 8.9.2009 (Annexure 19) is fit to be quashed and is quashed, the matter remitted back to the Drug Controller with liberty to issue corrigendum in regard to charge No. 7 so as to mention Batch No. JK 81409 for JK 8409 and to proceed thereafter if the authorities are not inclined to accept the explanation of the petitioner that he charged price beyond M.R.P. on account of failure of the manufacturer to serve Form No. V after manufacturer proceeded to reduce the M.R.P. for the drugs for which the tender stood already accepted by the authorities of the PMCH earlier and supply was in progress. In the event the proceeding in terms of this order is not closed by the authorities then be concluded as early as possible in any case within one month from the date of receipt / production of a copy of the order. This writ application is accordingly disposed of.