(2004) 03 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. No. 3525 of 1990

Shri Moti Ayurved Bhawan APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 131, 25, 34, 84, 87
Penal Code, 1860 (IPC) — Section 116, 139, 161

Citation : (2004) 2 PLJR 760

Hon'ble Judges : S.N. Hussain, J;Nagendra Rai, J

Bench : Division Bench

Advocate : S.N. Jha, Manu Shankar Mishra and Satyendra Kumar Jha, for the Appellant; Ashok Kumar Singh and Nirmala Kumari, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai and S.N. Hussain, JJ.—Though initially the Petitioner filed this writ application for quashing the order dated 16.5.1990 issued by the Commissioner of Excise and the order dated 21.5.1990 issued by the Superintendent of Excise, Chapra, by which the Petitioner was restrained from manufacturing Ayurvedic Tonics on the allegation of being used as Alcoholic beverages till the licence is renewed under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, hereinafter referred to as ''MNTP Act''. However, during the pendency of the writ application, an application filed by the Petitioner for renewal of the licence under the said provisions has been rejected by order dated 4.4.1991, as contained in Annexure-17 and the said order was brought on record by filing supplementary affidavit and now the grievance of the Petitioner is against the said order.

2. Admitted facts are that the Petitioner has been granted licence under the provisions of The Drugs & Cosmetics Act, hereinafter referred to as the ''Drugs Act'' and that licence is being renewed from time to time. The Petitioner was also granted licence in the year 1987 under Rule 84 of MNTP Act. The licence was

being renewed from time to time. In the meantime, Annexures-10 and 11, as stated above, were issued restraining the Petitioner from manufacturing Ayurvedic Tonics till the renewal of the licence. On 31.5.1990 a notice was issued to the Petitioner to show cause as to why prayer for renewal of the licence be not refused under Rule 87 of the Rules framed under MNTP Act, hereinafter referred to as ''MNTP Rules'' on three grounds, namely, (i) the storage for keeping finished products has not been done in terms of Rules 25, 34 and 131 of MNTP Rules; (ii) the premises for manufacturing the medicines have not been constructed in terms of the map and the same is in violation of Rules 95 and 25 of the MNTP Rules; and (iii) on 8.9.1989 licensee and his associates created hindrance in d charge of duty to the public servant when they had gone for inspection of It premises.

3. The Petitioner after receipt of the said show cause notice filed a detailed show cause reply, a copy of which has been annexed as Annexure-16, in which he stated that there is no violation of the Rules and allegation of causing hindrance to the public servant in discharge of their duty during inspection of the premises is also not correct. Thereafter, vide impugned order, as contained in Annexure-17 the renewal of licence has been refused.

4. From perusal of Annexure-17 it appears that two grounds have been assigned for refusal to renew the licence. One is for creating hindrance in discharge of duty by the public servant and manufacturing of sub-standard medicines for the purpose of sale in the market.

5. Learned Counsel appearing for the Petitioner submitted that one of the grounds on the basis of which the renewal of licence has been refused i.e. manufacturing of sub-standard medicines for sale was not mentioned In the show cause notice (Annexure-14) and as such the same cannot be a ground for rejection of renewal of licence as he was not afforded reasonable opportunity to meet the charges levelled against him.

6. Learned Counsel appearing for the, State, on the other hand, submitted that no doubt the show cause does not contain aforesaid charge but report shows that sub-standard medicines were prepared and in such a situation absence of affording reasonable opportunity will not vitiate the order.

7. Thus, the only question for consideration is whether the impugned order is vitiated on the grounds urged on behalf of 1 the Petitioner. There is no specific provision stating the grounds for refusal to renew licence. Rule 87 of the MNTP Rules contains the provision for revocation or suspension of licence and it provides that the licence may be revoked or suspended if the licensee has committed breach of the conditions thereof or any of the provisions of the Act or Rules or has been convicted for an offence u/s 161 read with 139 or with Section 116 of the Indian Penal Code. The proviso to this Rule provides that no such revocation or suspension shall be made unless the holder of the licence is given reasonable opportunity against the action proposed to be taken.

8. The question is whether the same Rule will also apply in case of refusal to renew the licence. Licence is granted in Form 1-1 and copy of which has been annexed as Annexure-3. From perusal of Annexure-3, it appears that Clause (4) of the said licence says that the licence may be revoked or suspended or its renews, may be refused, if any declaration made or information given in the application thereof is found to be false or if any undertaking given in the application is not carried out. In the application an undertaking has been given to manufacture medicines in terms of the provisions of the Act. A declaration has been also given to manufacture standard medicines as prescribed under the Rules. Thus, the renewal of the licence can be refused if there is violation of the terms of the Act and Rules and breach of the undertaking given in the licence. Thus, though there is no specific mention in Rule 87 of the MNTP Rules about the grounds for refusal to grant licence but the same Rule will apply in view of the fact that the same grounds are also mentioned, in the licence for refusal to renew the licence. There is no dispute about the settled proposition of law that refusal to grant licence or cancellation of licence visit civil consequences and even in absence of any specific provision of giving an opportunity of hearing, that has to be read under the provisions in view of the expansion of horizon of principle of natural justice. However, that situation does not arise in this case as Rule 87 of the MNTP Rules is very specific and clear which provides that reasonable opportunity to show cause has to be given against proposed action.

9. Three grounds were mentioned in the show cause, as stated above, for refusal to renew the licence. After filing show cause, two grounds have not been found correct and the renewal of licence has been refused on one of the grounds mentioned in the show cause and the other ground i.e. manufacturing of sub-standard medicines, which, ground does not find mention in the show cause notice. Thus, with regard to second ground no reasonable opportunity of hearing was afforded to the Petitioner. In that view of the matter, the refusal to renew the licence on the said ground is vitiated on account of violation of principle of natural justice. So far first ground is concerned, no doubt, the order being administrative one and elaborate reasoning like judgment is not expected from the authority but once show cause is filed, then it is expected that the administrative authority will assign some reasons even briefly to indicate its mind regarding application with regard to the assertion made in the show cause. The impugned order shows that this requirement is lacking with regard to ground No. 1. Thus, because of the aforesaid two infirmities in the order, only option open to this Court is to quash the order and remit the matter to the Excise Commissioner. Accordingly, the impugned order is quashed and the matter is remitted to the Excise Commissioner to rehear the matter afresh. So far as ground No. 2 given in the impugned order for refusal to renew the licence i.e. manufacturing of substandard medicines is concerned, there is no need to give fresh show cause as the Petitioner is aware of the same and he, if so advised, may file his show cause with regard to that allegation. However, if the Excise Commissioner finds some additional ground, in that case a show cause need be issued to the

Petitioner and thereafter the matter be decided in accordance with law.

10. As the matter is an old one, the Petitioner is directed to appear before the Excise Commissioner on 1Qth May, 2004, who on that day in presence of the parties will fix a firm date and thereafter dispose of the matter in accordance with law.

11. In the result, this writ application is allowed as indicated above.