

M/S. Simon George and Sons Vs. the Assistant Drug Controller

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Court : Kerala

Decided On : Sep-25-2014

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appellant : M/S. Simon George and Sons

Respondent : The Assistant Drug Controller

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE THURSDAY, THE 25TH DAY OF SEPTEMBER 2014 3RD ASWINA, 1936 WP(C).No. 24924 of 2014 (M)

----- PETITIONER : ----- M/S. SIMON GEORGE & SONS, A REGISTERED PARTNERSHIP FIRM, REPRESENTED BY ITS MANAGING PARTNER, MR.K.SIMON GEORGE, AGED 65 YEARS, S/O.LATE MR.K.S.GEORGE, RESIDING AT GEMSI HOUSE, DOOR NO.XXX/460, NEAR GENERAL HOSPITAL, PATHANAMTHITTA. BY ADV. SRI.K.S.BHARATHAN
RESPONDENTS : ----- 1. THE ASSISTANT DRUG CONTROLLER, OFFICE OF THE ASSISTANT DRUGS CONTROLLER, SOUTH ZONE, KOLLAM - 691 001.

2. THE DRUGS INSPECTOR, PATHANAMTHITTA - 689 645. BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. WP(C).No. 24924 of 2014 (M)

APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : TRUE COPY OF EXTRACT OF REGISTER OF FIRMS. EXHIBIT P2 : TRUE COPY OF THE DEED OF PARTNERSHIP DATED0104.1977. EXHIBIT P3 : TRUE COPY OF THE SUPPLEMENTARY DEED OF PARTNERSHIP DATED0312.1993. EXHIBIT P4 : TRUE COPY OF THE ORIGINAL LICENCE BEARING NO.0147/20/1994/SZ DATED1802.1994. EXHIBIT P5 : TRUE COPY OF THE RENEWED LICENCE BEARING NO.0147/20/1994 DATED1802.1994. EXHIBIT P5(A): TRUE COPY OF THE RENEWAL LICENCE BEARING NO.0148/21/1994 DATED1802.1994. EXHIBIT P5(B): TRUE COPY OF THE RENEWED LICENCE BEARING NO.0149/20B/1994 DATED1802.1994. EXHIBIT P5(C): TRUE COPY OF THE RENEWED LICENCE BEARING NO.0150/21B/1994 DATED1802.1994. EXHIBIT P6 : TRUE COPY OF THE COMMUNICATION DATED0605.2013. EXHIBIT P7 : A TRUE COPY OF THE RENEWED LICENSE DATED3012.1993. EXHIBIT P8 : A TRUE COPY OF THE LETTER DATED0109.2014 ISSUED BY PETITIONER. EXHIBIT P9 : A TRUE COPY OF THE APPLICATION DATED2209.2014. EXHIBIT P9(A): A TRUE COPY OF THE APPLICATION DATED2209.2014. EXHIBIT P10: A TRUE COPY OF THE CHALLAN DATED2009.2014. EXHIBIT P10(A): A TRUE COPY OF THE CHALLAN DATED2009.2014. EXHIBIT P11: A TRUE COPY OF THE

JUDGMENT

DATED1007.2009 IN W.P.(C).NO. 18251 & 18289/2009. RESPONDENT(S)' EXHIBITS ----- NIL //TRUE COPY// P.A.TO JUDGE. Msd. A.MUHAMED MUSTAQUE, J.

===== W.P(C).No.24924 of 2014
===== Dated this the 25th day of September, 2014

JUDGMENT

Petitioner is a registered firm engaged in retail business of pharmaceutical drugs. Ext.P1 is the registration of the firm before the Registrar of Firms. There were four partners. One of the partner died. The legal heirs of the partner who passed away are not prepared to join partnership firm. In Ext.P4 license, clause No.5 reads as follows: "The licensee shall inform the Licensing Authority in writing in the event of

any change in the constitution of the firm operating under the license. Where any change in the constitution of the firm takes place, the current license shall be deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh license has been taken from the Licensing Authority in the name of the firm with the changed constitution." As per the above clause, license will be deemed to be valid only for three months from the date on which the change takes place. The partner died on 02.07.2014. Therefore reckoning with the above period, validity of the license will be only up to 01.10.2014. W.P(C).No.24924 of 2014 2 2. Petitioner has approached the first respondent with Ext.P9 application for renewal of the license in favour of the reconstituted firm without legal heirs of the partner who died. Therefore, there shall be a direction to the first respondent to consider Ext.P9 for grant of license after issuing notice to the legal heirs of the deceased partner which shall be finalised within six weeks. No coercive steps shall be taken against the petitioner based on clause 5 of Ext.P4. If an adverse decision is taken against the petitioner by the first respondent, that shall be kept in abeyance for a further period of two weeks so that the petitioner can avail statutory remedies. Petitioner shall also file an affidavit to the effect that the petitioner shall indemnify the first respondent any liabilities for issuing license without obtaining consent from the legal heirs of the deceased partner. The Writ Petition is disposed of as above. Sd/- A.MUHAMED MUSTAQUE, JUDGE. Sbna/25/09/14

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