

Sunbeam Pharmaceuticals Industries Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-03-1996

Judge : Asok Kumar Ganguly, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 18, 23, 25 and 33; Drugs and Cosmetics Rules, 1945 - Rules 84A and 85; [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Jurn. Case No. 7956 of 1993

Appellant : Sunbeam Pharmaceuticals Industries

Respondent : State of Bihar and ors.

Advocate for Def. : Yugal Kishore, S.C. and Birendra Narayan Sharma, J.C. to S.C. VII

Advocate for Pet/Ap. : Sudhir Kumar Katriar and K.N. Diwakar, Advs.

Disposition : Petition allowed

Judgement :

Asok Kumar Ganguly, J.

1. In this writ petition, the petitioner has prayed for quashing the order dated 11th Jan. 1992 passed by respondent No.2, whereby, the petitioner's licence for manufacturing the Sterile water for injection was cancelled. The petitioner has also

prayed for quashing the order dated 8th May, 1993 passed by the appellate authority (respondent No. 3) whereby the appeal against the said order was dismissed.

2. The facts of the case shortly put are as follows;--

The petitioner claims to have obtained Drugs licence in Form 27 in terms of Rule 75 of the Drugs and Cosmetics Rules 1945 (hereinafter referred to as the said rule). According to the petitioner the said licence was granted and renewed from time to time since 1975. It is further stated that the licence granted in 1975 contains the list of 18 manufacturing products including water for injection 5 ml. I.P. sample. It is further stated that on 7-12-1988 at the time of renewal of the licence No. 280/75 the petitioner was allowed to manufacture only 13 products out of 18 products originally granted in 1975 and water for injection for 5 ml. I.P. was deleted. However, one additional item was allowed to be manufactured by the petitioner, i.e. sterile water for injection I.P. of 5 ml. and 10 ml. It may be, however, stated that the petitioner has not disclosed his licence in the said writ petition or in the rejoinder affidavit filed in this proceeding. Therefore, this Court is not aware of the terms of the licence.

3. Since the writ petition is concerned with the question of cancellation of petitioner's licence the petitioner ought to have disclosed the licence in this proceeding.

4. However, as it appears that under Memo No: 625 (15) dated 13th May, 1992 respondent

No. 2 issued a notice calling upon the petitioner to show cause why his licence granted under the Drug Rules be not cancelled for the allegations mentioned in the said show cause notice. Copy of the said show cause notice has, however, been annexed as Annexure-4 to this writ application. The said show cause was based on a complaint received from the Joint Commissioner (Nagpur Division) Food and Drug Administration, Maharashtra State, Nagpur to the Drugs Controller-cum-Licensing Authority, Directorate of Health Services (Bihar) Patna, and also a report of the Government Analyst, Hyderabad.

5. The case of the petitioner is that on receipt of the said show cause he replied to the same, but unfortunately again the petitioner's reply to the said show cause has not been disclosed in the writ application. The petitioner, however, in paragraph 5 set out the grounds on which the said reply to the show cause is based. Those grounds are : (1) MX 96 is not manufactured by the petitioner; (2) Sterile water for injection I.P. 5 ml. of batch No. 550 has not been manufactured by him; (3) in so far the manufacture of sterile water for injection of batch No. S-25 is concerned, it was stated that the manufactured item was sold to M/s. Hindustan Chemicals, Nagpur.

6. The entire petition is based on petitioner's grievance against non compliance of the provisions of Section 23 and Section 18 and 25 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the said Act).

7. This Court on a perusal of the said provisions, namely, Section 23 and 18 and also Section 25 of the said Act, is of the view that those provisions are attracted only when there is a prosecution against the petitioner, and not in this case which relates to a proceeding for cancellation of licence.

8. In the writ petition, no prosecution, if any lodged against the petitioner, has been challenged. What has been challenged is a proceeding for cancellation of petitioner's licence. The said proceedings for cancellation of petitioner's licence are governed by the provisions of the said rules which are of course framed under the aforesaid Act. Under the provisions of the said Rules prior to cancellation of the licence the petitioner must be given an opportunity to giving reply to a show cause. In the instant case the said opportunity for showing cause was given to the petitioner. A copy of the show cause notice along with the analysis

report, Hyderabad are also annexed to this writ petition. Therefore, the-procedural requirements under the said Rules have been complied with in the instant show cause proceeding.

9. It is unfortunate that the petitioner has not disclosed the reply give by him in show cause proceeding before this Court. This also makes the petition incomplete in so far as the challenge to the proceeding for cancellation of licence is

concerned.

10. The only grievance which the petitioner has urged is that he was not heard at the stage when the final order was passed. From a perusal of the provisions of Rule 85 of the said Rules this court finds that there is no provisions under Rule 85 for giving a personal hearing. The petitioner has admittedly stated that his licence has been cancelled under the provisions of Rule 85 of the said Rules. Provisions of Rule 85 of the said Rules merely state that a licence can be cancelled after giving the licensee an opportunity to show cause. Such an order for cancellation of the licence must be passed by the appropriate authority by stating reasons therefor.

11. In the instant case this Court finds that the impugned order for cancellation of licence contains brief reasons for cancellation. In fact, apart from raising the technical pleas, the petitioner has not taken any other plea in support of his defence. Therefore, this Court does not find anything in the order of cancellation of licence from which it can be said that the petitioner is entitled to get a hearing at the stage of cancellation of licence. The order which has been passed without personally hearing the petitioner is not inconsistent with the provisions of Rule 85 of the said Rules.

12. No personal hearing is contemplated under Rule 85 of the said Rules and on a construction of the provisions of Rule 85 of the said Rules, this Court is of the view that the requirement of personal hearing cannot be read into it by necessary implication in the said rule.

13. In this writ petition, the petitioner has never stated that personal hearing was ever prayed for. In fact, the contents of the show cause notice has not been disclosed. This Court cannot hold that in absence of a clear legislative intent and that too in the absence of any prayer of the petitioner demanding a personal hearing, the requirement of

personal hearing can be read into the said provisions.

14. The petitioner in this connection placed reliance on various judgments but those judgments have no application to the facts of this case as would appear from the discussion below.

15. First reliance was placed by the learned counsel for the petitioner on the decision of the House of Lords in the case of *Ridge v. Baldwin* reported in (1963) 2 All ER 66. In that celebrated decision of *Ridge v. Baldwin* (supra) the appellant, Baldwin was dismissed by the Watch Committee without observing the rules of natural justice in the sense that he was not charged nor was he informed of the grounds on which the Watch Committee wanted to proceed against him. He was also not given any opportunity to present his case. As such the decision to dismiss the appellant was declared null and void.

16. The principles of law laid down in the said decision are obviously of high authority and subsequently followed innumerable cases by the Apex Court but the fact situations here are totally different and those principles have no relevance to the facts of the present case.

17. The same is true also of the other cited decision of the Court of Appeal in the case of *Pett. v. Greyhound Racing Association, Ltd.* reported in (1968) 2 All LR 545. In *Greyhound Racing* (supra) the dispute was over the right of the trainer in the National Greyhound Racing Club to represent his case by a lawyer. The learned judges held that since as a result of the inquiry, the trainer's reputation and livelihood may be at stake, the trainer's request to appear through a lawyer is justified and the trainer had a right not only to appear himself but he also has a right to represent his case by a lawyer.

18. Here no request was made by the petitioner before the Licensing authority of being afforded a personal hearing so the question of engagement of a lawyer does not arise. Therefore, the ratio of this decision in *Greyhound Racing* (supra) has no application. In fact, before the appellate authority, the petitioner's case was represented by a lawyer.

19. In other decision of the Court of Appeal cited by the learned counsel for the petitioner in the cases of *R. v. Barnsley Metropolitan Borough Council, Ex parte*

Hook reported in (1976) 3 All England Report page 452 deals with the question

of grant of the remedy by way of Certiorari to quash the decision of a market authority when the decision of the authority is disproportionate to the gravity of offence.

20. The facts of Bamsley Metropolitan Council (*supra*) are quite interesting. One particular evening after the market was closed and all public lavatories were locked, the applicant, Mr. Harry Hook, a trader at Bamsley Market on an urgent call of nature, went to a side street and 'urinated there'. The matter was reported to a particular Committee of the local authority and that committee by its decision imposed a ban on the trader to trade and revoked the licence. The matter went up in appeal before the court of Appeal and Court of Appeal by a Certiorari proceeding quashed the decision broadly on two grounds. They are (1) The Committee acted in breach of natural justice by hearing the market manager's evidence in the absence of the applicant and (ii) the punishment imposed on the trader was far more excessive having regard to gravity of misconduct alleged against the applicant.

21. The decision is one of the leading cases on the topic in question but has not the remotest application to the facts of the present case.

22. The decision of the Division Bench of Madhya Pradesh High Court in the case of *M/s. Agarwal Medical and General Stores v. State of Madhya Pradesh* reported in AIR 1973 Madhya Pradesh 255 is a decision dealing with the provisions of Drugs and Cosmetic Act, 1940. But in that case the licence was cancelled without giving a licence either (1) a show cause notice or (ii) the analyst's report- So the Court held that the authority did not act in accordance with the principles of natural justice. Here both the analyst's report (Annexure-6) and the show cause notice (Annexure-4) were given to the petitioner. So the said decision in *M/s. Agarwal Medical* (*supra*) has no application.

23. Even though no review is called for, the petitioner filed a review petition against the order of cancellation of licence. Thereafter, however, the petitioner filed an appeal against the order of cancellation and the said appeal was filed to

the Health Minister of the State Government.

24. It is not in dispute that while passing order the appellate authority heard learned counsel appearing for the petitioner. But the appellate

authority while passing the order had referred to the past conduct of the petitioner. Thus, the appellate authority considered various materials which were not disclosed in the show cause notice. The impugned appellate order therefore travelled beyond the allegations levelled against the petitioner in the show cause notice. As a result of this, order passed by the appellate authority becomes infirm. The appellate authority ought to have strictly confined his considerations to the allegations against the petitioner in the show cause notice and addressed himself to the materials on record. The appellate authority, acting in a quasi judicial capacity and passing an order which (sic) serious consequences in so far as the appellant is concerned, erred in law by travelling beyond his permissible limits.

25. In that view of the matter, the order passed by the appellate authority (Annexure-2) is set aside. The matter is remanded to the appellate authority for hearing the appeal on merits afresh. Since this matter is of 1993 the appellate authority is directed to dispose of the appeal in accordance with law and in the light of the observations made in this judgment within a period of four months from the date of receipt/production of a copy of this order, and after giving the petitioner, or his authorised representatives, an opportunity to present its case. It goes without saying that the appellate authority must pass a reasoned order.

This writ petition is therefore allowed to the extent indicated above. There will be no order as to costs.

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