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Court : Madhya Pradesh

Decided On : Feb-18-1985

Reported in : AIR1986MP148

Judge : P.D. Mulye and ;R.K. Varma, JJ.

Acts : Contitution of India - Article 226; [Drugs and Cosmetics Act, 1940](#) - Sections 38; Drugs and Cosmetics Rules, 1945 - Rule 65

Appeal No. : M.P. No. 740 of 1983

Appellant : Jamitsingh, Indore

Respondent : Collector and Licensing Authority Under Drugs Rules 1945, Indore and anr.

Advocate for Def. : S.M. Jain, Adv.

Advocate for Pet/Ap. : B.L. Pavecha, Adv.

Disposition : Petition allowed

Judgement :

Mulye, J.

1. The petitioner, who has a wholesale and retail distribution shop of drugs, cosmetics and cutlery at Malwa Mill Chourahain the name and style of Dilip Medical Stores, has filed this petition under Articles 226 and 227 of the Constitution of India in the matter of the [Drugs and Cosmetics Act, 1940](#) to quash the order of suspension of the petitioner's license, dated 1-3-83 passed by respondent No. 1 (Annexure-H) as also the order dated 5-8-83 passed by respondent No. 2 Annexure-K.

2. The short facts giving rise to this petition, which are not in dispute may be stated, in brief, thus : The petitioner was granted license in Forms Nos. 20, 20B, 21 and 21-B bearing No. 402 from the respondent No. 1 under the provisions of the Drugs and Cosmetics Rules, 1945 framed under the [Drugs and Cosmetics Act, 1940](#). On 7-8-82 at about 1 p.m. the Drug Inspectors came to the shop of the petitioner. But the petitioner at that time was not present in his shop though his brother Dilip Singh was present. The two Inspectors prepared an inspection note with regard to some irregularities found by them as per Annexure-E as follows :

'The proprietor and the qualified salesman Shri Jamit Singh not available at the shop during inspection. Shri Dilip is looking after sales and Drugs which are to be sold by a qualified salesman.

Inspection, book in form No. 35 not made available for recording inspection note.'

On this basis the respondent No. 1 on 10-11-82 (Annexure-F) served a show cause notice to the petitioner as to why action should not be taken against him for violating the terms of the license. The petitioner by his reply Annexure-G dated 20-11-82 pointed out that the qualified person had gone out of the shop just for a few minutes during the inspection., However, no scheduled drug was sold during the absence of the qualified person, as the shop also deals in other cutlery/cosmetics items which are sold in his absence by the other members employed ' in the shop. Regarding form No. 35 he submitted that it was in the custody of the proprietor who was not available at the time of inspection and hence it was not shown to the Inspector.

3. The respondent No. 1 by his order Annexure-H dated 1-3-83 has made reference to violation of Rules 65(15)(c)(ii), 65(16), 65(7) of the said Rules, which in fact are not found in the report of the Inspectors. The respondent No. 1 by the said order has nowhere found that when the Inspectors had gone for inspection of the shop any scheduled drugs were being sold to customers by a person who was not qualified to sell the same. On the contrary, according to, respondent No. 1 as the inspection might have taken about an hour, he could not believe that the petitioner, who was the licensee, was not present in the shop only for some time. There is nothing on record to indicate that the inspection took more than an hour. Similarly he also found that because the inspection note book was not kept in the shop it has to be presumed that the petitioner did not co-operate with the Inspectors, which also does not find place in the report of the Inspectors, and consequently he suspended the licence of the petitioner for a period of one month from 1-3-1983.

4. Being aggrieved the petitioner filed an appeal before respondent No. 2 who probably without carefully going through the entire record also confirmed the order of respondent No. 1 by assuming that even in the absence of the petitioner scheduled drugs were being sold, when the Inspectors visited the shop though there is absolutely no evidence and material to that effect nor it is the case of the Inspectors found in the report. So far as the other point is concerned, the appellate authority has not touched it at all. Thus, it is apparent that the impugned orders have been passed in a mechanical manner without carefully looking into the provisions of the Rules.

5. The learned Dy. Government Advocate was not in a position to support the impugned orders legally though he tried to contend that the petitioner has at least violated the condition of the license in not producing the register in Form No. 35 which he was required to maintain. However, it does not appear from the impugned order of respondent No. 1 that even after issuing the show cause notice the petitioner was called upon to submit the inspection book in form No. 35. Therefore, we see no force in this contention raised on behalf of the respondents.

6. It is no doubt true that the petitioner's . license was suspended only for a period of one month which period has also expired. On that basis the learned Dy. Government Advocate tried to contend that now no relief can be granted to the petitioner in this petition which has become infructuous. However, we may usefully quote the observations of the Gujarat High Court reported in AIR 1966 Guj 244 (Ratilal Bhogilal Shah v. State of Gujarat) :

'The learned Assistant Government Pleader faintly argued that the licence having expired on Dec. 31, 1960, the relief would be infructuous. But as pointed out by Sinha, J. in AIR 1954 Cal 157 at the p. 159 the relief would not be infructuous. If the order of cancellation stands, the petitioner is prejudiced in two ways. Firstly, there is ignominy of the charge that the petitioner is guilty of something which is prejudicial to the security of public peace and secondly, his chances of procuring a fresh licence are greatly prejudiced if the cancellation of his licence is allowed to remain. Whether he will in fact be able to procure one is not for this court to consider. It depends entirely upon the discretion of the respondent exercised properly within the limits imposed by the provisions of the Indian Arms Act. It is, therefore, clear that the relief would not be infructuous.'

The observations support the contentions of the petitioner in this case.

7. In the result this petition succeeds and is allowed with costs. The impugned orders passed by the respondent No. 1 Annexure-H and the Appellate order passed by respondent No. 2 Annexure-K are quashed and set aside. Counsel's fee Rs. 250/-. The outstanding amount of security deposit shall be returned to the petitioner in person after due verification.