

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1952 of 2024

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M/s Mattei Electro Homoeo Industries a proprietorship concern having its registered office at Industrial Area Bikramganj, Plot No. B4 and B5, P.S.-Bikramganj, District-Rohtas through its proprietor Ashok Kumar Singh, Male, aged about 55 years, son of Late Daya Shankar Singh, resident of Village-Dhangain, P.S.-Bikramganj, District-Rohtas-802212.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
2. The Secretary, Registration Excise and Prohibition Department, Patna.
3. The Commissioner of Excise, Rohtas.
4. The Collector, Rohtas.
5. The Assistant Commissioner of Excise, Rohtas.
6. The State Drug Controller (Ayush) cum State Licensing Authority, Bihar, Patna.

... ... Respondent/s

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Drugs and Cosmetics Act, 1940 – Bihar Prohibition and Excise Act, 2016 – Sections 13 and 17 and section 2(40) Constitution of India-/ Article 14, Article 19(1)(g) and Article 19(6) – Petitioner got license from the Competent/State Licensing Authority for manufacturing of Homeopathic medicine – petitioner approached Excise Department for procuring of intoxicants – Department rejected petitioner's application relying on Act, 2016 – As per Article 19(6), State is empowered to impose restriction u/Art. 19(6) only by means of law, and not by means of executive order - State has not come up with any policy decision in form of law so as to distinguish or classifying existing traders from a separate class of trader/manufacture – Commissioner's order was arbitrary – Order set aside – Department was directed to provide petitioner the intoxicants material for the purpose of manufacture of Homeopathic medicine on par without discrimination.

Judgement report in (2004)11 SCC 26 was referred to.

[Para 9, 10, 11, 12 and 13]

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... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti, Advocate Mr.Abhishek Anand, Advocate Ms.Kanupriya, Advocate
For the Respondent/s	:	Mr.Mujirbaual Haque, GP12 Mr.Pranoy Kumar, AC to GP12

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-03-2024

In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For issuance of an appropriate writ of certiorari, quashing the order dated 28.12.23 as contained in Memo No. 14/M&TP/2023-8171, passed by the Respondent No 2 namely The Secretary, Registration. Excise and Prohibition Department, Bihar, Patna by which the application of the petitioner for issuance of



necessary orders enabling the petitioner to procure/purchase Extra Neutral Alcohol (ENA) for manufacture of Homeopathic Medicines, has been rejected on a flimsy ground that in the light of the judgment and orders passed by the Hon'ble Supreme Court and Hon'ble Patna High Court and Section 13 and 17 of the Bihar Prohibition and Excise Act, 2016, grant of new license to the petitioner and allotment of ENA would not be in accordance with law;

(ii) Issuance of a writ of Mandamus, directing the respondents particularly the respondent no. 2 to issue necessary orders, enabling the petitioner to procure/purchase Extra Neutral Alcohol (ENA) for manufacture of Homeopathy Medicine;

(iii) Pass such other order(s) as your Lordships may deem fit and proper in the facts and circumstances of the present case.”

2. Petitioner proprietorship industry established with an object of manufacture for sale (or distribution of) homeopathic medicine. In this regard, he had obtained license under the Drugs and Cosmetics Act, 1940. Such license has been issued by the State Drug Controller (Ayush)-cum-State Licensing Authority, Bihar, Patna, and it is in the Form – 25-C (vide Rule-85D), such license was issued on 25.02.2022, and it would be in vogue for the period from 25.02.2022 to 24.02.2027. Faced with these dates and events, petitioner approached the Excise Department in procuring 12,000 litres of ENA (Extra Neutral Alcohol) on 11.04.2023. Application was not disposed of or his grievance has not been redressed, resulted in filing CWJC No. 9801 of 2023 and it was



disposed on 28.07.2023 while directing the Excise Commissioner – respondent to pass a detailed speaking order. Accordingly, petitioner grievance has been rejected on 28.12.2023. Hence, the present petition.

3. Learned counsel for the petitioner submitted that rejection of petitioner's grievance insofar as providing 12,000 liters of ENA is contrary to earlier two decisions of this Court which were affirmed by the Hon'ble Supreme Court which are part and parcel of this petition, namely, CWJC No. 6415 of 2016 decided on 27.10.2016 and CWJC No. 8705 of 2017 decided on 12.02.2018. Hon'ble Supreme Court in Civil Appeal No. 247 of 2017 affirmed the decision of this Court on 20.04.2018 in SLP(C) No. 9375 of 2018. The principle laid down in the aforementioned decision of the Co-ordinate Bench has been completely ignored. However, it is submitted that earlier decisions are applicable to such of those existing license at the relevant point of time whereas the petitioners intends to manufacture homeopathic medicine with reference to license dated 25.02.2022. In other words, for new manufacturer providing ENA is not permissible. In support of such contention learned counsel for the respondents relied on Section 13 & 17 read with Section 2 (40) of Bihar Prohibition and Excise Act, 2016.



4. Learned counsel for the petitioner submitted that reasoning assigned in the impugned order dated 28.12.2023 is incorrect. It is submitted that State has come up with policy decision insofar as manufacture of medicines it is dated 17.03.2016 bearing memo no. 1507 which was subject matter of CWJC No. 6415 of 2016 and it was set aside by Co-ordinate Bench on 27.10.2016. The same principle was reiterated in subsequent decision in CWJC No. 8705 of 2017 and it was disposed of on 12.02.2018. It is further submitted that denial of providing requisite ENA for the purpose of manufacture homeopathy medicine to the petitioner amounts to discrimination and it is in violation of Article 19(1)(g) of the Constitution.

5. *Per contra*, learned counsel for the respondents submitted that there is no infirmity in the impugned decision of the respondent dated 28.12.2023. The concerned authority has assigned the reasons as to why the petitioner is not entitled to procure ENA and other related spirits in respect of manufacture of homeopathic medicine. He relied on Section 13 & 17 of the Act, 2016 read with subsequent Section 2 (40) Act, 2016.

6. Heard learned counsel for the respective parties.

7. Undisputed facts are that petitioner is a license holder to manufacture for sale or for distribution of homeopathic



medicines pursuant to license issued by the State Drugs Controller on 25.02.2022, and it is in vogue for the period from 25.02.2022 to 28.02.2027. Pursuant to license, petitioner has approached the respondents seeking for procurement of ENA for the purpose of manufacture of homeopathic medicine. The same was not acted upon in the result petitioner was compelled to approach this Court in the seeking Writ of Mandamus. It was granted thereafter the Excise Commissioner proceeded to reject the grievance of the petitioner. Hence the present petition.

8. State Government evolved a policy decision in respect of refusal of providing certain intoxicants/ENA material for the purpose of manufacture of medicine *vide* circular dated 17.03.2016 cited (*supra*), policy decision dated 17.03.2016 involving issuance of new license and renewal of existing license was banned and it was subject matter of litigation before this Court in CWJC No. 6415 of 2016 and subsequently in CWJC No. 8750 of 2017 both the petitions were allowed. In fact 17.03.2016 policy decision of the State Government was struck down while directing the concerned official respondent to renew the existing license. That does not mean that permission granted by this Court only to such of those existing license holder. On the other hand, we have to take note of the fact that policy decision dated 17.03.2016 is in respect



of issuance of new license and renewal of existing license as on that particular date. In other words, insofar as banning new license was also one of the subject matter of policy decision dated 17.03.2016 and it has been struck down.

9. Taking note of these facts and circumstances, in all fairness Excise Commissioner should have permitted petitioner to procure related intoxicants for the purpose of manufacture of homeopathic medicine. There can't be a discrimination among the existing manufacture of homeopathic medicine and new license holder insofar as procurement or supply of intoxicant materials on behalf of the State Government.

10. It is to be noted that there is a violation of Article 19(1)(g) of the Constitution. On this issue, Hon'ble Supreme Court decision in the case of **State of Punjab & Another vs. Devans Modern Breweries Ltd. & Another** reported in (2004) 11 SCC 26, in Para 344(3), which reads as under:-

“344 (3) The right to carry on trade in liquor is a fundamental right within the meaning of Article 19(1)(g) of the Constitution and the State may, however, legislate prohibiting such trade either in whole or in part in terms of clause (6) thereof.”

In the light of principle laid down by the Hon'ble Supreme Court, it is evident that State is permitted to invoke



Article 19(6). At this stage, it is necessary to re-produce Article 19:-

“19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality,



reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].”

No doubt, State is empowered to impose restrictions under Article 19(6). However, it should be only by means of law and not by means of executive order. Even such executive order dated 17.03.2016 has been struck down by Co-ordinate Bench of this Court and matter was taken up to Hon’ble Supreme Court and it has been affirmed and examined in detailed to the extent that



right cannot be taken away for the purpose of engaging trade and other activities in accordance with law. Further, the State respondents have not come up with any policy decision to overcome Article 14 of the Constitution to the extent that there is a reasonable classification among the existing manufacture of homeopathy medicine or newly license holder. In other words, there would be a violation of Article 14 of the Constitution. On this issue, Hon'ble Supreme Court in number of cases held that there is a reasonable restriction insofar as invoking Article 14 of the Constitution. Even the respondents State has not come up with any policy decision in the form of law so as to distinguish or classifying that existing traders form a separate class of trader or manufacturer and so also newly license holder form a separate class of trader/manufacture.

11. In the absence of these material information and the fact that policy decision of the State Government dated 17.03.2016 was already subjected to judicial review. Therefore, rejection of the petitioner for procurement of ENA for the purpose of manufacture of homeopathic medicine is arbitrary. Accordingly, impugned communication dated 12.10.2023 stands set aside.

12. Respondent No. 2 - Secretary, Registration Excise and Prohibition Department, Patna is hereby directed to provide



intoxicants/ENA material for the purpose of manufacture of homeopathic medicine to the petitioner, in accordance with law and on par with such of those manufactures who are being provided by the State without their being any discriminatory. Necessary intoxicants/ENA materials demanded by the petitioner shall be provided to the petitioner within a period of two months from the date of receipt of this order.

13. Further, till any policy decision or any statutory rules are issued petitioner shall be provided intoxicants/ENA materials for the purpose of manufacture of homeopathic medicine from time to time.

14. With the above observations, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.03.2024
Transmission Date	NA

