

Court No. - 3

Case :- WRIT - C No. - 3131 of 2024

Petitioner :- Dr. Biswas Ayurveda International Pvt.Ltd. Thru. Auth. Representative Mr.Vikas Tripathi And Another

Respondent :- Union Of India Thru. Ministry Of Ayush , New Delhi And Others

Counsel for Petitioner :- Gantavya

Counsel for Respondent :-

A.S.G.I.,C.S.C.,Umesh Singh

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. Heard Ms. Meha Rashmi, learned counsel for the petitioners, Sri Rajesh Tiwari, learned Additional Chief Standing Counsel appearing on behalf of the State Respondent and Sri Umesh Singh, Advocate, who has filed power on behalf of the respondent no.1, which is taken on record.

2. This petition has been filed with the following main prayer:-

"issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned orders dated 12.03.2024; 26.02.2024 and 17.08.203 contained in Annexures Number-1, 2 and 4 to the writ petition;

issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Respondents not to give effect to the impugned order dated 12.03.2024 contained in Annexures Number-1 to the writ petition."

3. It has been submitted by learned counsel for the petitioners that a manufacturing license was issued by the State Licensing Authority, Directorate of Ayush, Haryana to the petitioner Good Health Ayurvedic capsules and their manufacturing facility is situated at Ambala. The petitioners have been manufacturing such medicines since February 2023, which is purely a herbal product. The petitioners' premises are being periodically inspected by the Ayurvedic Drug Inspector Ambala, as mandated under the Rules. Samples are also drawn and tested in the Government Laboratory Haryana, under the relevant Act and Rules. The sale of petitioners'

Good Health Capsules is carried out all across India through their network of distributors and retailers with more than two lakhs units sold every month in the State of U.P.

4. On 10.07.2023, the petitioners received a letter dated 06.07.2023 issued by the respondent no.3. The Director-cum-Licensing Authority, Ayurvedic Services, Department of AYUSH, Government of U.P, Lucknow, informing the petitioners that its ayurvedic medicine Good Health ayurvedic capsule had been sent for testing to the Drugs Testing Laboratory, Lucknow and the report showed the medicine to be sub-standard. The petitioners represented to the respondent no.3 on 09.08.2023 saying that the respondent no.3 did not have the jurisdiction to either inspect premises or collect the samples or send them for analysis under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder.

5. Only the Drug Inspector under the Rules of 1945 duly appointed for ayurvedic medicine can inspect the premises, collect the samples and effectively seal the same and send them for analysis. The petitioners also collected the batch sample of the alleged sample and the portion of sample so collected under the terms of Section 23(4) of the Drugs and Cosmetics Act. On 22.08.2023, the petitioner received *ex parte* order dated 17.08.2023 issued by the respondent no.3 alleging that sample was taken from the batch No.DB-10003 and sent to Drug Testing Laboratory at Lucknow, it was found adulterated with allopathic substance *betamethosane*.

6. It has been submitted by learned counsel for the petitioners that the petitioners submitted reply and sought a complete copy of the report of the testing report on 12.09.2023. The petitioners disputed the finding of the alleged report and submitted reports generated by a laboratory authorized by the Drug Inspector Ambala. The petitioners also prayed that further test be carried out at the petitioners' expenses. Despite such request made by the petitioners, the respondent no.3 did not send the drug sample in question for testing at the laboratory indicated by the

petitioner or for further analysis before the Appellate Authority under Section 25 of the Act, but the petitioners received a letter dated 26.02.2024 rejecting the petitioners' reply dated 12.09.2023 as unsatisfactory and repeated the allegation that the Good Health Ayurvedic Capsules contained allopathic substance *betamethosane* and that the petitioners should show-cause as to why selling of these medicines should not be prohibited in the entire State of U.P. Without waiting for the petitioners' reply, the respondent no.2 has passed the impugned order dated 12.03.2024 permanently banning the manufacturing, supply and sale of the said medicine in the entire State of U.P. with immediate effect. The petitioners came to know of passing of the impugned order dated 12.03.2024 only through media reports.

7. It has been argued by learned counsel for the petitioners that as per the Office Memorandum issued by the Ministry of Ayush, Government Of India, dated 19.03.2024, it has been provided that only concerned State Licensing Authorities as per the addresses of the manufacturing firm can initiate action under the Act and Rules. This clarification was issued by the Ministry of Ayush on certain action taken by the respondent nos.2 and 3 against Himalaya Drug Company and its ayurvedic medicines.

8. Sri Rajesh Tiwari, learned Standing counsel, on the other hand, has pointed out Section 33 of the Drugs and Cosmetics Act and also Rule 162 wherein action can be taken regarding misbranding, adulterated and spurious drugs. He has also pointed out Rule 163(5) wherein drug samples collected can be sent for analysis by the respondent nos.2 and 3. Since 2022, several complaints have been received with regard to certain Ayurvedic medicines being manufactured by the petitioners and another factories and inspection was carried out with regard to more than ten such manufacturers and samples were taken of more than 20 drugs sold in the market by them as ayurvedic and purely herbal medicine. After samples were collected and analyzed, Good Health Ayurvedic capsules were found to be

adulterated with *betamethosane*. Hence action has been taken by banning production and sale of such medicine within the State of U.P.

9. Learned counsel for the petitioners has submitted that the respondent cannot ban the production of such capsules.

10. This Court is, *prima facie*, of the opinion that respondents cannot ban the production which is being carried out by the petitioners' factory at Ambala, Haryana. Sale of such Ayurvedic medicine which has been found to be adulterated with steroid certainly be stopped by the State Authorities.

11. We accordingly, as an interim measure, provide that the order dated 26.02.2024 and 12.03.2024 shall not be given effect only in so far as it relates to manufacturing of the disputed ayurvedic medicines till the next date of listing.

12. Learned Standing Counsel prays for and is granted six weeks' time to file counter affidavit.

13. Two weeks' time thereafter shall be available to learned counsel for the petitioners to file rejoinder affidavit.

14. List this case after eight weeks on 30.05.2024.

15. Whenever the case is listed next, name of Sri Umesh Singh, Advocate, be shown in the cause list as appearing for the respondent no.1.

Order Date :- 4.4.2024
Rahul