

property which was not under the tenancy of defendants No. 1 to 11, on the date sale deed Exhibit P-1, (dated 3rd November, 1971) was executed in favour of the plaintiff-appellant. So far as the portion of the property which was under the tenancy of defendants No. 1 to 11 or their predecessor-in-interest, the same shall be subject to the tenancy rights of these defendants and the plaintiff would be at liberty to obtain possession of this portion of the property in accordance with law. Plaintiff-appellant shall also be entitled to mesne profits to the extent the same were granted by the trial Court, under issue No. 8.

(20) For the reasons recorded above, the appeal is accepted and the plaintiff's suit is decreed with costs Counsel's fee Rs. 1000.

S.C.K.

Before : R. S. Mongia, J.

PUNJAB CHEMISTS ASSOCIATION (REGD.),—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14229 of 1989.

6th December, 1990.

Drugs and Cosmetics Rules, 1945—Rl. 59—Drugs & Cosmetics (9th amendment) Rules, 1989—Rl. 49-A—Appointment of Licencing Authority—No qualifications prescribed—Civil Surgeons authorised to exercise power of Licencing Authority—Rules amended—Qualifications prescribed—Civil Surgeons not possessing prescribed qualifications—Such Surgeons cannot act as Licencing Authority.

Held, that by notification, the appointment of Civil Surgeons as Licencing Authorities is *stricto sensu* not an 'appointment'. It is conferring a power or jurisdiction on Civil Surgeons that they can exercise the powers of the Licencing Authority. Since, lateron, an embargo was placed that no person shall be qualified to be a Licencing Authority under the Act unless he has the requisite qualifications, it would follow that no person could exercise the powers or discharge the functions or act as a Licencing Authority thereafter unless he had the qualifications mentioned in Rule 49-A of the Drugs and Cosmetics (9th amendment) Rules, 1989. Therefore, the Civil Surgeon who

**Punjab Chemists Association (Regd.) v. State of Punjab and others
(R. S. Mongia, J.)**

took the impugned action in these cases, acted without jurisdiction as he was not a Licensing Authority on the dates when the action was taken.

(Paras 6 & 7)

Petition under Article 226/227 of the Constitution of India praying that :

- (a) *a writ in the nature of Certiorari/Mandamus or such other appropriate writ, order or direction be issued declaring the action of the Respondents No. 2 and 3 are illegal, arbitrary and mala fide and further declaring the Notices Annexure P-2 and P-3, issued by Respondent No. 3, as illegal, arbitrary, without jurisdiction and un-constitutional;*
- (b) *such other appropriate writ, order or direction as may be deemed fit and proper in the facts and circumstances of the instant case, may also be issued in favour of the petitioner Association and against the respondents;*
- (c) *filing of Certified copies of the Annexures may be dispensed with;*
- (d) *issuance of advance notices to the Respondents may be dispensed with;*
- (e) *records relating to the case may be summoned for the kind perusal of this Hon'ble Court;*
- (f) *costs of the writ petition may be awarded to the petitioner.*

S. S. Nijjar Bar-at-Law, Sr. Advocate, G. S. Bajwa and Mandeep Singh, Advocates, for the Petitioner.

Charu Tuli, A.A.G., Pb., for the Respondent.

JUDGMENT

R. S. Mongia, J.

(1) This judgment of mine shall dispose of C.W.P. No. 14229 of 1989 as well as C.W.P. No. 2924-A of 1990, as common question of law and fact are involved.

(2) Briefly the facts in the first writ petition two orders dated 20th February, 1990 (Annexures P-4 & P-5) in case of J. K. Medical Hall and M/s Malhotra Brothers declining their application for

renewal of drug licenses has been passed. It is these orders which have been impugned in this writ petition.

(3) Mr. S. S. Nijjar, Bar-at-law, Senior Advocate, learned counsel for the petitioners submitted that under Rule 59 of the Rules, the State Government is authorised to appoint Licensing Authorities for carrying out the purpose of the Act and the Rules and prior to the amendment of the Rules on 12th April, 1989, there were no qualifications mentioned in the Act or the Rules as to who could be empowered to act as a Licensing Authority. According to the learned counsel by 9th amendment of the Rules on 12th April, 1989, the qualifications of a Licensing Authority were prescribed by introducing Rule 49-A in the Rules and according to the learned counsel, no person could act as a Licensing Authority after the said date, unless he has the qualifications as prescribed under Rule 49-A of the Rules. At this stage, Rule 59 empowering the State Government to appoint the Licensing Authority may be noticed :—

“59. (1) The State Government shall appoint Licensing Authorities for the purpose of this part for such areas as may be specified.

(2) Application for the grant or renewal of a licence to sell, stock or exhibit for sale or distribute drugs, other than those included in Schedule X shall be made in Form 19-A, as the case may be, or in the case of drugs included in schedule X shall be made in Form 19-C, to the licensing authority and shall be accompanied by a fee of rupees forty :

“Provided that in the case of an itinerant vendor or an applicant who desires to establish a shop in a village or town having population of 5 000 or less, the application in Form 19-A shall be accompanied by a fee of rupees ten.

(3) A fee of rupees six shall be paid for a duplicate copy of a licence to sell, stock exhibit for sale or distribute drugs, other than those included in Schedule X, or for a licence to sell, stock, exhibit for sale or distribute drugs included in Schedule X, if the original is defaced, damaged or lost:

Provided that in the case of itinerant vendor or an applicant who desires to establish a shop in a village or town having

Punjab Chemists Association (Regd.) v. State of Punjab and others
(R. S. Mongia, J.)

a population of 5,000 or less, the fee for a duplicate copy of licence if the original is defaced, damaged or lost, shall be rupees two.

- (4) Application for renewal of a licence to sell, stock or exhibit for sale or distribute drugs, after its expiry but within six months of such expiry shall be accompanied by a fee of rupees forty, plus an additional fee at the rate of rupees thirty per month or part thereof :

Provided that in the case of an itinerant vendor or an applicant desiring to open a shop in a village or town having a population of 5,000 or less the application for such renewal shall be accompanied by a fee of rupees ten, plus an additional fee at the rate of rupees eight per month or part thereof."

(4) Rule 49-A was introduced by way of amendment on 12th April, 1989, which is in the following terms :—

"49-A *Qualifications of a Licensing Authority.*—No person shall be qualified to be a Licensing authority under the Act unless :—

- (i) he is a graduate in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in clinical pharmacology or microbiology from a University established in India by law; and
- (ii) he has experience in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years :

Provided that the requirement as to the academic qualification shall not apply to inspectors appointed under this Act and who are in position on the date of commencement of the Drugs and Cosmetics (Ninth Amendment) Rules 1989.

- (c) After rule 50, the following rules shall be inserted namely;....."

The learned counsel argued that an authority to act as a Licensing Authority or to exercise the powers of a Licensing Authority after 12th April, 1989, must have the requisite qualifications as prescribed under Rule 49-A *ibid.* Since, according to the learned counsel, the Civil Surgeon, Kapurthala, did not have these qualifications, he could not act as a Licensing Authority and the notices issued in the first writ petition by Civil Surgeon, Kapurthala and the orders rejecting the applications for renewal of licenses in the latter writ petition, were wholly without jurisdiction, as the Civil Surgeon was not the Licensing Authority, which Authority only had such a jurisdiction.

(5) On the other hand, Mrs. Charu Tuli, Assistant Advocate General, Punjab, submitted that by notification dated 4th May, 1983, all Civil Surgeons in the State of Punjab were to be Licensing Authorities for the retail sale of drugs in their respective jurisdiction for the purpose of Part VI of the Rules. The notification reads as under :—

“No. 3/2/1982/2HB-II/76.—In supersession of Punjab Government, Health Department Notifications No. 1522-2HB-II/76/1700, dated the 13th July, 1978 and in exercise of the powers conferred by rule 59 of the Drugs and Cosmetics Rules, 1945, and all of powers enabling him in this behalf, the Government of Punjab is pleased to appoint all the Civil Surgeons in the State of Punjab to be the Licensing Authorities for the retail sale of drugs in their respective jurisdiction for the purpose of Part VI of the aforesaid rules.”

The learned counsel went on to submit that all Civil Surgeons in the State of Punjab having been appointed as the Licensing Authorities under the above notification, would continue to be so in spite of the fact that they did not have the requisite qualifications as prescribed under Rule 49-A *ibid.* It was not disputed that Civil Surgeon, Kapurthala did not have the qualifications as prescribed under Rule 49-A of the Rules. The argument was that if any appointment of a Licensing Authority is to be made after 12th April, 1989, only then it has to be seen whether that individual had the requisite qualifications under Rule 49-A; otherwise the persons who had been appointed Licensing Authorities prior to 12th April, 1989 would continue to act as Licensing Authorities.

(6) I have given my thoughtful consideration to the respective contentions of the parties. I find that there is a considerable force in the contentions of the learned counsel for the petitioners. Strictly

Punjab Chemists Association (Regd.) v. State of Punjab and others
(R. S. Mongia, J.)

speaking by notification dated May 4, 1983, referred to above, the appointment of Civil Surgeons as Licensing Authorities is *stricto sensu* not an 'appointment'. It is conferring a power or jurisdiction on Civil Surgeons that they can exercise the powers of the Licensing Authority. Since on 12th April, 1989, an embargo was placed that no person shall be qualified to be a Licensing Authority under the Act unless he has the requisite qualifications, it would follow that no person could exercise the powers or discharge the functions or act as a Licensing Authority after the said date unless he had the qualifications mentioned in Rule 49-A of the Rules. If Mrs. Charu Tuli's argument is to be accepted, that would mean that all Civil Surgeons even after 12th April, 1989 would continue to act as Licensing Authorities, though they are not qualified. The proviso to Rule 49-A *ibid*, which was introduced on 12th April, 1989, clearly provides that these academic qualifications would not apply to Inspectors appointed under the Act and were in a position on the date of the amendment, but there is no such saving as far as the Licensing Authority is concerned. To test this argument, suppose there is a case in which a Civil Surgeon is appointed after 12th April, 1989, then under the notification of 4th May, 1983, reproduced above, that Civil Surgeon would be able to act as a Licensing Authority but the Rules debar a person to act as a Licensing Authority, even though he may be a Civil Surgeon unless he has the requisite qualifications after April 12, 1989.

(7) For the reasons mentioned above, I hold that the Civil Surgeon, Kapurthala, who took the impugned action in these cases, acted without jurisdiction as he was not a Licensing Authority on the dates when the action was taken.

(8) For the foregoing reasons, both the writ petitions are allowed and Annexures P-2 and P-3 in C.W.P. No. 14229 of 1989 and Annexure P-4 and P-5 in C.W.P. No. 2924-A of 1990, are hereby quashed, but without any order as to costs. The Appropriate Authority under the Act and the Rules will be at liberty to pass fresh orders in accordance with law.

(9) Before parting with the judgment, I may observe that the writ-petitioners had also challenged that the Controlling Authority under the Act and the Rules could not act as such in view of the introduction of Rule 50-A of the Rules. I am refraining myself in opining anything on the matter in these writ petitions.

S.C.K.