

M/S Jubilant Life Sciences Limited vs State Of U.P. Thru Principal Secy Excise ... on 28 March, 2025

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Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44176-DB

A.F.R.

Reserved on :- 13.02.2025

Delivered on :- 28.03.2025

Court No. - 29

Case :- WRIT - C No. - 12502 of 2012

Petitioner :- M/S Jubilant Life Sciences Limited

Respondent :- State Of U.P. Thru Principal Secy Excise And Others

Counsel for Petitioner :- Nikhil Agrawal

Counsel for Respondent :- Piyush Shukla

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Arun Kumar Singh Deshwal,J.

Per : Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Nikhil Agrawal, learned counsel for the petitioner and Sri D.K. Tiwari, learned Additional Chief Standing Counsel for the State.

2. The present petition was initially filed for quashing the order dated 12.02.2012 passed by District Magistrate (Licensing Authority) by which the M.A.-4 license of the applicant was suspended for committing repeated violation of Rule 17-D, 17-E, 17-F, 17-G of U.P. Poisons (Regulation of Possession and Sale) Rules 1921 (hereinafter referred to as the "Rules 1921") as well as non-obtaining the license of M.A.-2 in pursuance of order dated 28.05.2011 with further direction to show cause why his M.A.-4 license may not be cancelled. Subsequently, an amendment was also made in the writ petition with the permission of this Court dated 12.11.2018, by which vires of Rule 17-B(b), Rule 17-D(d), Rule 17-F was challenged on the ground that the same is beyond the power of the State Government under Section 2 r/w Section 6 of the Poisons Act, 1919.

3. The petitioner is a company that purchases methyl alcohol to use it for industrial purposes for which the petitioner company had also obtained license M.A.-4 as per Rule 17-B(c) of Rules 1921. The M.A.-4 license permits the license holder to purchase, possess, use or sell methyl alcohol for medical, scientific, educational, industrial or professional purposes. The inspection was made by the District Excise Officer, Jyotibha Phule Nagar, on 20.05.2011 of the premises of the petitioner wherein certain violations of the Rules 1921 were found, which includes purchasing the methyl alcohol from non-licensed unit. Thereafter, a show cause notice dated 01.06.2011 was issued to the petitioner, which he replied to on 13.06.2011. Thereafter, the District Nodal Committee, in its meeting dated 11.08.2011 directed the petitioner to take a license in form M.A.-2. Thereafter, a letter was also issued on 12.10.2011 directing the petitioner to obtain M.A.-2 license. The petitioner challenged the resolution dated 11.08.2011, the order dated 12.10.2011 as well as the vires of Rule 17-D of Rules 1921 before this Court by way of WRIT- C No. 70182 of 2011, which was partly allowed vide order dated 07.12.2011 by quashing the resolution dated 11.08.2011 and the order dated 12.10.2011 with further direction to pass a fresh order after considering the petitioner's reply dated 13.06.2011. However, the Court refused to declare Rule 17-D(d) of the Rules 1921, as ultra vires. In pursuance of the order dated 07.12.2011 passed in WRIT- C No. 70182 of 2011, the impugned order dated 12.02.2012, has been passed, which is under challenge.

4. The contention of learned counsel for the petitioner is that it is not in dispute that the applicant is purchasing and storing methyl alcohol for use in industrial purposes. It is not involved in the sale of methyl alcohol. An M.A.-2 license is for possession for sale as well as sale of methyl alcohol. Therefore, the petitioner cannot be directed to obtain M.A.-2 license. It is further submitted by learned counsel for the petitioner that the State, under Section 2 of the Poisons Act, 1919 has power to regulate the possession for sale as well as sale of any poison. Therefore, the State cannot frame rules for regulating the possession of poison for any other purpose except the sale. Therefore, Rule 17-B(b), 17-B(c), 17-D(d) and 17-F of the Rules 1921 are ultra vires to Section 2 of the Poisons Act, 1919 being beyond the power of the State Government because the same lies within the power of Central Government u/s 3 of the Poisons Act, 1919.

5. Per contra, learned Standing Counsel vehemently opposed the contention of learned counsel for the petitioner and submitted that the petitioner himself obtained M.A.-4 license under Rule 17-B(c). Therefore, it is bound to follow Rules 17-B, 17-D and 17-F of the Rules 1921. It is further submitted by learned Standing Counsel that Section 8 of the Poisons Act, 1919 gives power to frame rule in addition to rule making power under Section 2 except on the subject of rule making power of the

Central Government under Section 3 of the Poisons Act, 1919.

6. After considering the submissions of learned counsel for rival parties and perusal of the record, it is not in dispute that the petitioner is M.A.-4 license holder under Rule 17-B(c) to purchase, possess, use and sell methyl alcohol for industrial purposes, and it is also not in dispute that the petitioner is not involved in the business of selling methyl alcohol. Rule 17-D of Rules 1921 further imposes a duty on M.A.-4 license holder to purchase the methyl alcohol from M.A.-1, M.A.-2 or M.A.3 license holder. For reference, Sections 17-B and 17-D of Rules 1921 (existing before amendment made in the year 2014) are being quoted as under :

17-B. Possession and sale of Methyl Alcohol without licence is prohibited-

(a) Any industry in the State producing Methyl Alcohol as a by-product shall not sell it except under a licence granted by the Licensing Authority in Form M.A.-1.

(b) Unless exempted from the operation of these rules, no person shall keep, possess for sale or sell whether by wholesale or retail Methyl Alcohol except under a licence granted by the licensing Authority in Form M.A.-2 and Form M.A.-3 for wholesale and retail respectively.

(c) No person shall purchase, possess, use or sell Methyl Alcohol for medical, scientific, educational, industrial or professional purpose or for the purpose of any act without a licence granted by the Licensing Authority in Form M.A.-4.

(d) No person shall purchase, possess, use or sell Methyl Alcohol in the form of thinners, paints and varnishes in quantities exceeding two litres without a licence in Form M.A.-4.

(e) No person or industry in the State shall store, possess, distribute, transfer or sell Methyl Alcohol under any licence to any person or industry without mixing a colouring agent and prudent colour as prescribed by the Excise Commissioner, Uttar Pradesh.

(f) The word and sign 'Poison' will be prominently written and displayed on all places and containers where or wherein, Methyl Alcohol or any of its products is stored or contained.

17-D. Sources of supply-

(a) No manufacturer of Methyl alcohol in the State of Uttar Pradesh shall sell Methyl Alcohol except under a licence in Form MA 1.

(b) Licensee holding a licence in Form M.A.-2 shall not obtain his supply of Methyl Alcohol except from-

(i) any licensee of the State holding a licence in Form M.A.-1 for possession and sale by wholesale of Methyl Alcohol:

(ii) any part of India outside the State of Uttar Pradesh under a permit granted by the Collector in Form M.A.-5.

(c) A licence holder in Form M.A.-3 shall obtain his supply of Methyl Alcohol from a licence holder in Form M.□-2.

(d) A licence holder in Form M.A.-4 shall obtain his supply of Methyl Alcohol from a licence holder in Form M.A.-1, M.A.-2 or M.A-3 as decided by the Licensing Authority, in the case of the M.A-4 licence intending to purchase and sell Methyl Alcohol in the form of thinners, pants and varnishes, he shall be permitted to do so from a MA-4 licensee who is authorised to manufacture such products.

(e) Licence holders in Form M.A.-2 and M.A.-3 shall not receive at their licensed premises any Methyl Alcohol except under a permit granted by the Collector in Form M.A. 5 Export of Methyl Alcohol out of Uttar Pradesh shall be allowed under a permit granted by the Collector in Form M.A.-7 only from the premises of a licence holder having M.A-Tor M.A.-2 licence.

(f) The licence holders in Form M.A.-1 and M.A.-2 shall not remove or allow any person to remove any Methyl Alcohol from his licensed premises without a transport permit granted by him in Form M.A.-6.

7. From the above rules, it is clear that an M.A.-2 license is required to be taken only for the purpose of possession for sale and sale of Methyl alcohol as wholesaler and not for possession of methyl alcohol for using it for industrial purposes. As per Section 17-D(d), M.A.-4 license holder shall purchase methyl alcohol from the license holder who is having M.A.-1, M.A.-2 and M.A.-3 license. Therefore, if supplier of methyl alcohol within or outside the State does not have M.A.-1, M.A.-2 and M.A.-3 license then license holder of M.A.-4 cannot purchase methyl alcohol from that supplier. There is no provision in Rules 1921 permitting the M.A.-4 license holder to purchase or procure methyl alcohol from unlicensed suppliers, even within the State but if it wants to purchase the same from the supplier of outside the State then it is permissible only after obtaining M.A.-2 license. It is also clear from the above analysis that M.A.-4 license holder can also sell methyl alcohol for the purpose mentioned in Rule 17-B(c) of Rules 1921, but if it wants to sell or possess the same for any other purpose not mentioned in Rule 17-B(c), then it has to obtain M.A.-2 license as wholesaler or M.A.-3 license for being a retailer and it is a wholesaler with M.A.-2 license can purchase methyl alcohol for any purpose, including the purpose mentioned in Rule 17-B(c) from outside the State.

8. From the impugned order, it is clear that the petitioner had purchased/procured the methyl alcohol, even for industrial purposes from the supplier within and outside the State though none of them was having M.A.-1, M.A.-2 or M.A.-3 license. Though for purchasing methyl alcohol from outside the State under the permit of the Collector, M.A.-2 license is necessary, but if the petitioner

wants to purchase Methyl alcohol from the licensed supplier within the State, then it is not required to obtain M.A.-2 license and the same is permissible on M.A.-4 license as per Rule 17-D(d), subject to the condition that it has to purchase it from a license holder having M.A.-1, M.A.-2 and M.A.-3 license but in the present case, petitioner purchased the methyl alcohol from unlicensed suppliers.

9. So far as the contention of learned counsel for the petitioner that Rules 17-B and 17-D of Rules 1921 are beyond the scope and power of the State Government is concerned, for that purpose, it is necessary to consider Sections 2, 3 and 8 of the Poisons Act, 1919. Section 2 of the Poisons Act, 1919 authorizes the State Government to frame rules for regulating the possession for sale and sale of Methyl alcohol, and Section 3 authorizes the Central Government to frame rules regarding the regulation of the purchase of poison from outside the country which is not the case herein and Section 8 of Poisons Act, 1919 further authorizes the State to make rules in addition to the rule making power u/s 2 of the Poisons Act, 1919. Except the area covered u/s 3 of the Poisons Act, 1919 for carrying out the purpose and object of the Poisons Act, 1919. Therefore, it is absolutely clear that, except to regulate the import of methyl alcohol from outside India, the State Government is authorized to frame rules to regulate, sell, purchase and possession of poison. Sections 2, 3 and 8 of Poisons Act, 1919 are being quoted as under :

2. Power of the State Government to regulate possession for sale and sale of any poison.--(1) The State Government may by rule regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the grant of licences to possess any specified poison for sale, wholesale or retail, and fixing of the fee (if any) to be charged for such licences ;

(b) the classes of persons to whom alone such licences may be granted ;

(c) the classes of persons to whom alone any such poison may be sold ;

(d) the maximum quantity of any such poison which may be sold to any one person ;

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same ;

(f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale ; and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

3. Power to prohibit importation into the States of any poison except under licence.--The Central Government may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation into [India] [across any customs frontier defined by the Central Government] of any specified poison, and may by rule regulate the grant of licences.

8. Rules.--(1) In addition to any other power to make rules hereinbefore conferred the State Government may make rules generally to carry out the purposes and objects of this Act [except section 3] (2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by the Central Government or by the State Government under this Act shall be published in the [Official Gazette] and on such publication shall have effect as if enacted in this Act.

[(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. rule.

(5) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

10. From the perusal of Rules 17-B and 17-D of Rules 1921, it is clear that these rules were framed in the exercise of power u/s 2 and 8 of Poisons Act, 1919. Therefore, the contention of learned counsel for the petitioner that Rules 17-B and 17-D of Rules 1921 are ultra vires being beyond the scope and power of the State Government, is misconceived, hence is rejected.

11. In view of the above analysis, this Court holds that Rule 17-B(b), 17-B(c) and 17-D(d) of Rules 1921, are within the scope and power of the State Government u/s 2 and 8 of the Poisons Act, 1919.

12. So far as the contention of learned counsel for the petitioner that Rule 17-F of Rules 1921 by which power of confiscation of Methyl alcohol by the District Magistrate, which was acquired, stored, sold, or used by any person or industry in contravention of the provisions of Rules 1921, is beyond the scope of Section 6 of the Poisons Act, 1919, is concerned, to decide this issue, it is relevant to mention that initially Poisons (Regulation of Possession and Sale) Rules 1921 was framed in the exercise of power u/s 2 of the Poisons Act, 1919. Subsequently, by way of amendment dated 27.07.1995, Rule 17 to 17-I were added as special provisions with respect to Methyl alcohol in exercise of power u/s 2 r/w 8 of Poisons Act, 1919. Rule 17-F of Rules 1921 provides specific power of confiscation to District Magistrate regarding Methyl alcohol, which was acquired, stored, sold, or used by any person or industry in contravention of the provisions of these rules. Thereafter, Rule 17-H of Rules 1921, further provides prosecution and punishment as per the provisions of Section 6

of the Poisons Act, 1919, which was related to the violation of Rules 2 and 3 of the Poisons Act. Rule 17-F and Rule 17-H of Rules 1921 are being quoted as under :-

17-F. Confiscation - Any Authorised Officer, if satisfied that Methyl Alcohol has been acquired, stored, sold or used by any person or industry in contravention of the provisions of these rules, will be competent to take possession of the same and report the matter to the District Magistrate. The District Magistrate will be competent to confiscate or get destroyed the same same in the presence of the Authorised Officer.

17-H. Prosecution and punishment - Any person found in possession of Methyl Alcohol in contravention of these rules shall be liable for prosecution and punishment under the provisions of the Poisons Act, 1919 (Act No.XII of 1919), as amended from time to time.

13. From the perusal of the above quoted rules, it is clear that these rules provide special provisions with respect to Methyl alcohol, though these rules do not apply to other poison which is not methyl alcohol. For that reason, special power of confiscation has been provided under Rule 17-F, but for other punishment, provision of Section 6 of the Poisons Act has been adopted by Rule 17-H of the amended Rules 1921. This Court also holds that power of confiscation is not contrary to Section 6 of the Poisons Act and is valid. Therefore, the contention of learned counsel for the petitioner that Rule 17-F is beyond the provisions of Section 6 of Poisons Act, 1919, so far as confiscation is concerned, is absolutely misconceived and, hence, rejected.

14. In the present case, it is not in dispute that the petitioner has purchased the methyl alcohol from a supplier based within the State who does not have an M.A.-1, M.A.-2 or M.A.-3 license and also procured methyl alcohol from a supplier based outside the State without having M.A.-2 license. Therefore, prima facie, there is a violation of provisions of Rules 1921 and for reason there appears to be no illegality in show cause notice/order. However, the impugned order is simply a show cause notice by which the license of the petitioner has been suspended. The petitioner can file an objection against that show cause notice or appeal under Rule 17-I.

15. Given the above, the present writ petition is disposed of with liberty to the petitioner to file an objection or appeal against the show cause notice within 15 days. In case such objection or appeal is filed by the petitioner against the impugned show cause notice, the same shall be considered and decided by the District Magistrate within the next one month without being influenced by the observation made hereinabove.

Order Date :- 28.03.2025 KS