

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6393 of 2015

M/s Naya Dawakhana (MFG.) CO. a proprietorship firm having its factory at Salimpur Ahra, Road No. - 1, Patna – 800003 through its Proprietor Sri Anup Kumar Agrawal, Son of Late Radhey Shyam Agrawal. Resident of 86, Saraswati Apartment, S.P. Verma Road, P.S.- Kotwali, town and District - Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The State Drug Controller cum Chief Licensing Authority, Bihar, New Secretariat, Vikash Bhawan, Patna
3. Sri Indrakant Kumar, Drug Inspector for Patna - 3, C/o The office of State Drug Controller, New Secretariat, Vikash Bhawan, Patna
4. Sri Yeshwant Kumar Jha, Drug Inspector for Patna - 11, C/o The office of State Drug Controller, New Secretariat, Vikash Bhawan, Patna
5. Sri Chunendra Mahto, Drug Inspector for Patna - 16, C/o The office of State Drug Controller, New Secretariat, Vikash Bhawan, Patna

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Ramesh Kumar Agrawal
For the Respondent/s : Mr.Gp4- Uma Shankar

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 05-05-2025

1. The petitioner has filed the Writ petition for the following reliefs:

"(i) For direction upon the respondent authorities particularly respondent Nos. 3, 4 and 5 to unseal the factory premises of the petitioner, which was sealed by them jointly on 09.08.2013 in illegal exercise of powers under the Drugs and Cosmetic Act, 1940 (hereinafter referred to as 'the Act' only).



(ii) For quashing the inspection report dated 09.08.2013 prepared by the respondent Nos. 3, 4 and 5 jointly as 'Drug Inspectors' under provisions of the Act.

(iii) To grant such other consequential relief(s) to the petitioner, which this Hon'ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

2. The brief facts culled out of the petition are that the petitioner firm is a proprietorship firm having its factory at Salimpur Ahra, Patna and holding a valid license bearing No. 985/92, in Form 25 issued by the respondent / State Drug Controller under the provisions of the Act and Rules framed thereunder for manufacturing and sale of drugs other than those specified in Schedules C, C(1) and X of the Act.

3. It is submitted by the petitioner that in view of the long illness of the wife of the



proprietor of the petitioner firm, and also due to financial problems and disconnection of electric supply, the petitioner's factory was closed since 18.12.2012 and, therefore, all the employees left the job of the petitioner and joined other person / firms.

4. It is further submitted by the petitioner that the petitioner's factory premises was inspected by the respondent Nos. 3 to 5 on 09.08.2013 at 7 AM when one Ravi Kumar was alone cleaning the premises. The said Ravi Kumar use to clean the factory premises, once a week as the factory was closed. Respondent Nos. 3 to 5 enquired with Ravi Kumar, who inturn informed them that the proprietor was out of town and he has opened the premises, only for cleaning purposes and the manufacturing process stalled since six months, inspite of it the impugned inspection report dated 09.08.2013 (Annexure-3) was prepared and the premise was sealed and a copy of inspection report was given to the landlord, namely, Sri Ravindra Kumar Sinha, who



subsequently gave the said copy to the petitioner when he returned to Patna. It is further submitted that the petitioner received a notice dated 10.10.2013 issued by the respondent/State Drug Controller on 19.11.2013, to which petitioner replied on 25.11.2013 (Annexure-4) by sending a reply, through speed post on 25.11.2013, clearly states about the aforesaid facts and also requested for unsealing the premises. Subsequently, a reminder dated 09.04.2014 (Annexure 4/A) was also given. It is further submitted that the petitioner has again addressed a letter dated 27.03.2015 and 01.04.2015 to the respondent/State Drug Controller for unsealing the factory premises of the petitioner firm. The petitioner contends that entry, inspection, search and seizure in the petitioner's factory and also of sealing the factory, premises are illegal and without any authority under the law and therefore the impugned inspection report made by respondent Nos. 3 to 5 / Drug Inspectors is liable to be quashed and further the respondent Nos. 3



to 5 may be directed to unseal the factory premises of the petitioner.

5. The Learned counsel for the petitioner submitted that the word 'Inspector' has been defined under Section 3(e) of the Act, which prescribes that "inspector" means an inspector appointed by the Central Government or a State Government under Section 21 or under Section 33G of the Act.

For the purpose of convenience Section 3(e) of the Act is extracted:-

3(e) "Inspector" means-

(i) in relation to Ayurvedic, Siddha or Unani drug, an Inspector appointed by the Central Government or a State Government under section 33G; and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under section 21;"

6. The Learned counsel for the petitioner submitted that Section 21 of the Act



deals about the appointment of Inspectors, in relation to drug or cosmetic other than Ayurvedic, Siddha or Unani drug. Sub-section (1) of Section 21 clearly provides that the Central Government or a State Government may by a notification in the Official Gazette appoints such persons as it thinks fit, having the prescribed qualifications to be inspectors for such areas as may be assigned to them. For the purpose of convenience Section 21(1) is extracted;-

"21. Inspectors - (1) The Central government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be."

7. It is submitted on behalf of the petitioner that Sri Indrakant Kumar (Respondent No. 3) Sri yashwant Kumar Jha (Respondent No. 4) and Sri Chunendra Mahto (Respondent No. 5) who claims them as Drug Inspectors for the area Patna-



3, Patna- 11 and Patna- 16 respectively have not been appointed as Inspectors, either by the Central Government or State Government by notifications published in the Official Gazette.

8. Further, the petitioner contends that the respondent Nos. 3 to 5 are not inspectors under the Act, because no notification has been published in the Official Gazette, either by the Central Government or by the State Government as required under Section 21 of the Act and therefore they have no authority to enter into the factory premises of the petitioner for making inspection, search and seizure as such the impugned inspection report dated 09.08.2013 is illegal and without any authority under the law as such, the same is fit to be quashed.

9. The Learned counsel for the petitioner further submitted that there is no provision for sealing the premises and therefore sealing of the petitioner's premises in question is also illegal and without authority under the law and therefore the respondents may be directed to



unseal the premises forthwith.

10. This Court Vide order dated 17.12.2024, has recorded the specific contention of the Learned counsel for the petitioner that the counter affidavit filed by the State does not reveal that Respondent Nos. 3 to 5 are the competent authorities under Section 21 of the Drugs and Cosmetics Act, 1940.

11. Upon which, the State has filed a supplementary counter affidavit stating therein that the respondent no. 3 (Indrakant Kumar), respondent no. 4 (Yeshwant Kumar Jha) & respondent no. 5 (Chunendra Mahto), are the competent authority to conduct inspection/investigation of the firm in question under Section 21 and 22 of the Drug and Cosmetics Act 1940. In this regard, it is stated a that in exercise of powers conferred under Section 21 of the Drugs & Cosmetics Act, 1940, the respondent no. 3 (Indrakant Kumar) and respondent no. 4 (Yeshwant Kumar Jha) along with some others were appointed to the post of Drug



Inspector (Allopathic system) vide Health Department's Notification No. 1208 (15) dated 20.07.2011 in which, respondent no. 3 is placed at Serial No. 10 and respondent no. 4 is placed at Serial No.2. It is further contended that in exercise of powers conferred under Section 21 of the Drugs & Cosmetics Act, 1940, the respondent no. 5 (Chunendra Mahto) along with others were appointed to the post of Drug Inspector (Allopathic system) vide Health Department's Notification No. 02 (15) dated 05.01.2004 in which, respondent no. 5 is placed at Serial No.11. It is further stated that vide departmental Letter No. 75 dated 12.08.2013 whereby altogether 09 Drugs Inspectors/Licensing Authority including the respondent Nos. 3 to 5 were authorized to conduct inspection of the firm in question.

12. Heard the Learned counsel for the petitioner and the Learned counsel for the State.

13. The Learned counsel for the petitioner in support of the case of the petitioner relied upon the judgment reported in **1999**



CRI.L.J.4449 (State of Maharashtra V R.A. Chandawarkar and others) at paragraph Nos. 40, 41 and 42. For better appreciation of the case, paragraph Nos. 40, 41 and 42 of 1999 CRI.L.J.4449 (supra) are quoted hereinbelow:

“40. It is to be noted here that the provision of section 21 of the Drugs and Cosmetics Act, 1940, makes it abundantly clear that the post of Drug Inspector is a very vital public post with wide range of powers to take samples and seize the samples and prosecute the persons for selling the adulterous, spurious and sub-standard quality drugs. In view of such vital powers conferred by section 21 of the Drugs and Cosmetics Act, 1940 on such Drug Inspectors, the said section clearly, mandates that the Central Government or the State Government, may issue notification in Official Gazette so as to appoint such Drug Inspectors for such areas as assigned to them. The intention of the legislature is very clear from the said section 21 of the Drugs and Cosmetics Act, 1940 that the appointment of such a person holding such an important post as a Drug Inspector, especially in the interest of public health, obviously will have to be notified in



the Official Gazette and that the said notification should indicate the area in which the said Drug Inspector can exercise his powers. In fact, section 21 does not say that the publication of notification in Official Gazette is discretionary. If one were to look at the wording of the said section carefully, the Central Government or the State Government may appoint such qualified persons as the Drug Inspectors as it thinks fit. In fact, the wording of the said section 21 shows that there is coma after the word 'may' and not before the said word so as to construe that the issuance of the notification in the Official Gazette is discretionary.

41. Taking into account all the purposes and objects of the Act and the powers conferred on the Drug Inspector who is the vital authority to initiate the prosecution, I hold that the appointment of Drug Inspector can only be through an Official Gazette Notification and not otherwise. I am also of the opinion that such a notification should also indicate the area in which such a Drug Inspector can operate and exercise his powers, and the same should not be left to conjectures and surmises of the public.



42. In the instant case, admittedly, there is no Official Gazette Notification appointing Mr. V.D. Patil as a Drug Inspector for Greater Bombay area and as such, Mr. V.D. Patil cannot claim to be a Drug Inspector for Greater Bombay area atleast up to 21st April, 1988 on which date the said notification was published. In the instant case, as observed earlier, the sample was taken on 29th September, 1987, was sent for analysis on 6th October, 1987 and the complaint was filed on 22nd March, 1988. Till such time there was no Official Gazette Notification notifying Mr. V.D. Patil as a Drug Inspector for Greater Bombay area. In view of the aforesaid very serious infirmity which goes to the root of the matter, I hold that the said Drug Inspector Mr. V.D. Patil had no authority whatsoever to seize the said samples of Drug Vanmycetin Opticops and forward the same for analysis to the Government Analyst and that he had no jurisdiction whatsoever to launch the said prosecution and file the criminal complaint against the accused on 22nd March, 1988"

14. It is also relevant to mention here that the parties have reported to the Court that



premises in question was unsealed by the respondent authorities.

15. In the backdrop of the facts and circumstances stated above, nothing remains to be decided in the present matter, as the respondent authorities have already unsealed the premises of the petitioner. Furthermore, from the aforesaid referred judgment, it appears that the respondent Nos. 3 to 5 were not competent authority to conduct the investigation of the case in question.

16. Accordingly, the inspection report dated 09.08.2013, prepared by the respondent Nos. 3 to 5 is, hereby, quashed

17. The Writ petition stands allowed.

18. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2025
Transmission Date	

