

Magistrate, Etah has cancelled the arms licence of the petitioner on account of misuse of weapon by threatening the police. Although, in the order, reference has been made to the criminal case pending against the petitioner. However, the cancellation of arms licence order itself records that the petitioner has not been able to show any acquittal order. It is admitted to learned counsel for the petitioner that in the criminal case charge sheet has been submitted against the petitioner and charges have been framed. The first information report was in respect of the same incident, which resulted in the cancellation of arms licence.

9. It is further to be seen that the findings recorded in the criminal case may have an important bearing with regard to the cancellation of arms licence of the petitioner as the present proceedings are summary proceedings. However, in the trial if the petitioner is convicted, the same may fortify the stand taken by the State for cancellation of arms licence. However, the acquittal order would also equally effects the cancellation of the arms licence and that is why the Licensing Authority has recorded a specific finding that no acquittal order has been produced by the petitioner.

10. In the present case, the defence of the petitioner was to the extent that the petitioner is running a hotel where the police personnel have attended and consumed food including liquor. However, the petitioner objected for consumption of liquor in the hotel. The money of the food was demanded and the same was denied, which resulted in the lodging of the first information report.

11. On a query being made to learned counsel for the petitioner as to what was the evidence lead in support of the defence of the

petitioner that the police personnel have abused their authority and have not paid the money for food, learned counsel for the petitioner could not demonstrate from record any material evidence. The defence of the petitioner qua the cancellation of the arms licence was required to be proved by the petitioner by leading evidence. Since the petitioner has not lead any evidence, therefore, it cannot be said that the petitioner has not misuse the firearm. It has also not been demonstrated that the report of the Senior Superintendent of Police, Etah dated 3.11.2016 is incorrect.

12. In view of the aforesaid, no error has been shown by the learned counsel for the petitioner in the impugned orders. The writ petition lacks merit and is, accordingly, dismissed.

13. However, in the event, an acquittal order is passed in favour of the petitioner in the criminal trial, the petitioner would be at liberty to apply before the Licensing Authority for restoration of the arms licence in accordance with law.

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**(2025) 2 ILRA 528**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 19.02.2025**

**BEFORE**

**THE HON'BLE PANKAJ BHATIA, J.**

Writ C No. 10598 of 2024

**M/s Shree Shanker Medicals ...Petitioner**  
**Versus**  
**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioner:**

Ayodhya Prasad Mishra, A.P. Mishra,  
 Jaylaxmi Upadhyay, Rituraj Mishra, Shesh  
 Ram Verma

**Counsel for the Respondents:**  
C.S.C.

**A. Civil Law -Constitution of India,1950-Article 226, 14 &19(1)(g)-Drugs and Cosmetics Act,1940-Section 23 - Rules,1945-Cancellation of Drug Licence-Improper Sampling –Show cause notice Deficiency-The petitioner challenged the cancellation of its retail drug licence and the dismissal of its statutory appeal-The court held that the sampling process violated the mandatory provisions of section 23 of the Act,1940 as only one sample was drawn instead of required three or four-the second show cause notice failed to propose cancellation or allege that the petitioner was the manufacturer of the substandard drug-the final order, presumed illegal manufacture by the petitioner without supporting evidence or confrontation with contradictory distributor replies-the court held that this violated the petitioner's rights under Article 14 and 19(1)(g) of the Constitution and was a clear breach of Rule 66 of the ,Rules 1945-consequently, both the cancellation and appellate orders were quashed and the petitioner's licence was restored.(Para 1 to 21)**

**The writ petition is allowed. (E-6)**

**List of Cases cited:**

UMC Techs. (P) Ltd. Vs FCI (2021) 2 SCC 551

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The present petition has been filed challenging an order dated 12.06.2023, whereby the licence granted to the petitioner for retail sale of the drugs under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act') was cancelled as well as the appellate order

dated 05.06.2024, whereby the appeal was dismissed. The petitioner has also challenged the show cause notice, which is contained in Annexure No.1 to the writ petition.

3. The facts, in brief, are that the petitioner was running a retail shop for sale of drugs and cosmetics after obtaining a licence on 09.11.2004, which permitted the retail sale of the medicines. The said licence was renewed subsequently on 30th October, 2019 and continued to be valid till the year 2024. However, on 22.12.2022, an inspection was carried out on the shop of the petitioner on the basis of some complaint made by one manufacturer of the medicines, namely, Dr. Reddy. The Drug Inspector, carried out an inspection and noted certain irregularities, for which a seizure memo was also prepared on the said date, which is on record at page No.51 of the paper book. In terms of the said seizure memo, the name of the complainant was also referred and the sample of six medicines were recovered. In pursuance of the said search carried out, a show cause notice was issued on 03.01.2023 calling upon the petitioner to explain the irregularities as noticed in the search. It is claimed that on 17.01.2023, the petitioner gave a reply denying the alleged irregularities. The said irregularities did not pertain to the six medicines, which were seized through the seizure memo. Despite the reply being given by the petitioner to the first show cause notice dated 03.01.2023, an order came to be passed on 31.01.2023 suspending the drug licence of the petitioner in terms of the power conferred by virtue of the Rule 66 of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as "the Rules"). It appears from the record that on 06.02.2023, a chemical examination report was issued

in respect of one out of six samples seized, wherein it was noticed that the sample does not confirm with a declared formula in respect of contents of Omeprazole and Demperidone. In pursuance of the said report, which can be read at page No.59 of the paper book, a show cause notice was issued on 03.03.2023 to one M/s. Bhagat Distributors, from whom, the petitioner had claimed that the drug was purchased and was kept for sale. The petitioner was served with the second show cause notice on 31.03.2023, calling upon the petitioner to do three things. The first to stop the distribution of the said drug and to produce the licence; second to disclose the name of the manufacturer along with proof and also do recall the drugs already sold in the market; and the third being to disclose the distribution manner of the said drug along with the evidences and also to disclose as to whom the said drug was sold along with the bill vouchers etc. It was indicated in the said notice that in the absence of giving the reply as desired in respect of the three aspects, a suitable action shall be taken under the provisions of the Act. A copy of the report was also furnished to the petitioner. The petitioner once again gave a reply to the said second show cause notice on 11.04.2023 denying the allegations. He also disclosed that he had purchased the said medicines through invoices numbers disclosed in the reply from the whole sale distributor M/s. Bhagat Distributors. It appears that on 20th April, 2023, the said M/s. Bhagat Distributors also gave a reply and disputed the sale of the drug to the petitioner as claimed by the petitioner. Thereafter, on 12.06.2023, an order came to be passed cancelling the drug licence of the petitioner. The said order is contained in Annexure No.2 to the writ petition. The petitioner, thereafter preferred an appeal against the said order as prescribed. The

same was also dismissed by means of an order dated 21.05.2024, which is on record as Annexure No.3 to the writ petition and also impugned in the present petition.

4. The submission of Shri Ayodhya Prasad Mishra, learned counsel for the petitioner is that the manner of sampling was contrary to the mandatory provisions contained in Section 23(4) of the Act. He argues that the three samples as are prescribed under sub-section 4 of Section 23 were not drawn and only one sample was drawn. He further relies upon the provisions contained in Section 25 of the Act to argue that if the samples were wrongly drawn the petitioner is denied the opportunity to challenge the finding as conferred by Section 25(4) of the Act, which is absent in the present case.

5. He further argues that in the second show cause notice, which led to the passing of the cancellation order, the cancellation was not proposed and the petitioner was only called upon to give reply in respect of the three things as mentioned in the second show cause notice and thus, the order of cancellation is without any show cause notice, which is mandatory in terms of Rule 66 of the Rules. He further argues that the report/reply submitted by the M/s. Bhagat Distributors was never provided to the petitioner nor was he confronted with the same, as such, it was a case of one reply given by the petitioner and a contrary reply given by the distributor, which ought to have been verified before passing the order impugned. □

6. He further argues that the power of cancellation of the licence as vested by virtue of Rule 66 of the Rules is not to be exercised in a mechanical manner as it empowers the authority to cancel the

licence either wholly or in respect of some of the substances. He also argues that the power of cancellation has to be exercised qua the conditions imposed in the licence, whereas the order of cancellation has been passed holding that the petitioner was the manufacturer of the said drug without there being any material in the form of evidence either alleged or established to come to the conclusion that the petitioner was a manufacturer and thus, the orders impugned are clear transgression of the statutory prescriptions and are liable to be quashed.

7. He argues that the right of the petitioner to carry business in accordance with the licence granted stands violated on account of said two orders, which are also violative of Article 19 of the Constitution of India. Thus, both the orders suffer from the vice of violating Article 19 and Article 14 of the Constitution of India and are liable to be set aside.

8. Learned Standing Counsel on behalf of the respondents argues that the order has been passed based upon the seizure of the drug at the time of inspection by the Inspector of the drug, who is well and duly empowered to carry out the inspection and in the said inspection, six drugs including the drug, which was found short of standard were seized and the same was sent for analysis. In the analysis, the same were found to be short of the quality. He argues that the licensing authority has passed the order after ascertaining the fact from the distributor from which the petitioner claimed to have purchased the medicines and as he had denied having sold such medicines, the only logical conclusion was to cancel the licence, which has been done by means of the impugned

judgement, as such, the writ petition deserves to be dismissed.

9. Before advertng to the factual submissions as recorded above, it is essential to see the mandate of the Drugs and Cosmetics Act, 1940, which is enacted in India to regulate the sale of drugs and cosmetics. Chapter IV of the said Act, essentially deals with the regulation of manufacture and sale of drugs and cosmetics in India. In terms of the powers conferred by virtue of Section 6(2), 12, 33 and 33(N) of the Act, 1940, the Central Government has framed rules known as the Drugs and Cosmetics Rules, 1945.

10. For the present case, part VI of the said Rules are the relevant rules, which prescribed the manner of sale of the drugs. The restrictions, which are prescribed and the power to take action if infractions are noticed.

11. Section 23, 24, 25 of the Act, 1940 and Rule 66 of the Rules, 1945, which are relevant for the purpose of the present case, are reproduced herein-below:-

**"23. Procedure of Inspectors.-**

*(1) Where an Inspector takes any sample of a drug or cosmetic under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.*

*(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug or cosmetic under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.*

*(3) Where an Inspector takes a sample of a drug or cosmetic for the purpose of test or analysis, he shall intimate such purpose in writing in the*

prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug 3 or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug 3 or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug or cosmetic; □

(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.

(5) Where an Inspector takes any action under clause (c) of section 22,?

(a) he shall use all despatch in ascertaining whether or not the drug 3 or cosmetic contravenes any of the provisions

of the section 18 and, if it is ascertained that the drug 3 [or cosmetic] does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug 3 [or cosmetic], he shall as soon as may be inform a Judicial Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug or cosmetic, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause. □

(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof.

**24. Persons bound to disclose place where drugs or cosmetics are manufactured or kept.** -Every person for the time being in charge of any premises whereon any drug or cosmetic is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug or cosmetic is being manufactured or is kept, as the case may be.

**25. Reports of Government Analysts.**-(1) The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report

to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A, and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence to the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under section 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug or cosmetic produced before the Magistrate under subsection (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

**Rule 66. Cancellation and suspension of licences.** (1) The Licensing Authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons therefor, cancel a licence issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the licence or with any provisions of the Act or Rules thereunder:

Provided that, where such failure or contravention is the consequence of an act or omission on the part of an agent or employee, the licence shall not be cancelled or suspended if the licensee proves to the satisfaction of the licensing authority?

(a) that the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or a director of the company, or

(b) that he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission the licensee had not or could not reasonably have had, knowledge of that previous act or omission, or

(c) if the act or omission was a continuing act or omission, he had not or could not reasonably have had knowledge of that previous act or omission, or

(d) that he had used due diligence to ensure that the conditions of the licence or the provisions of the Act or the Rules thereunder were observed.

(2) A licensee whose licence has been suspended or cancelled may, within

*three months of the date of order under sub-rule (1), prefer an appeal against that order to the State Government, which shall decide the same."*

12. In the present case the manner in which the sample was drawn is clearly contrary to the mandate of Section 23 of the Act.

13. In the present case, it is also evident from the facts as pleaded and recorded above, an inspection was carried out and a show cause notice was issued regarding the irregularities, noticed on 03.01.2023, to which a reply was submitted by the petitioner. However, after the report was obtained with regard to the one of the medicines, which are seized, the second show cause notice was issued on 31.03.2023 based upon the said chemical examination report. In the said second show cause notice, it was mentioned that on the basis of analysis, the sample was found not to be confirming to the declared formula in respect of the said medicines and the petitioner was called upon to follow the three conditions, which are as under:-

*"1. विषयांकित औषधि का अद्यतन भण्डार बताये तथा उक्त औषधि का वितरण न करे साथ ही अपने फर्म का लाइसेंस प्रस्तुत करे।*

*2. विषयांकित औषधि का क्रय विवरण एवं निर्माता का नाम पता प्रमाण के साथ प्रस्तुत करे तथा वितरित की गई औषधि को वापस मंगाये।*

*3. विषयांकित औषधि का वितरण विवरण, निम्न सूचनाओं के साथ प्रस्तुत करे यथा वाऊचर संख्या, दिनांक औषधि की मात्रा,*

*उस व्यक्ति/फर्म का नाम पता जिसको विषयांकित औषधि वितरित की गयी हो।"*

14. The petitioner was also called upon to give a reply within a period of three days, failing which, it was prescribed that the action shall be taken in accordance with law. In the entire show cause notice, there was no mention that the petitioner was responsible for manufacture of the drugs nor was the petitioner called upon to explain with regard to any steps that he may have taken with regard to the manufacture of the drugs. The reply was duly submitted by the petitioner to the said show cause notice also. The order impugned, however, proceeds to record that there was a presumption that the petitioner had manufactured the drugs, inasmuch as, it has been recorded in the order that as per the above, it was established that the petitioner was manufacturing the drugs in an illegal manner and was selling the same, which was injurious to the health. The said finding has been recorded, based upon no evidence whatsoever. The show cause notice was silent with regard to the allegation of the petitioner having manufactured any drugs. No evidence is found either in the order or in the show cause notice to suggest that the petitioner was guilty of manufacture of the drugs.

15. It is very well settled that any allegation especially of the nature which are as serious as levelled in the present case, have to be served with the show cause notice. The contents of the show cause notice should be clear and explicit in the terms of the allegations. The show cause notice cannot be vague and in the absence of there being a clear allegation with regard to the manufacture of the drugs, no finding could have been recorded as have been

done by means of the cancellation order dated 12.06.2023. It is well settled that a show cause notice should specify particular grounds on the basis of which action is proposed to be taken as held by Supreme Court in (2021) 2 SCC 551 **UMC Technologies (P) Ltd. Vs. Food Corporation of India.**

16. As regards, the sale of the said drugs, there is no finding that the reply given by the petitioner is correct or that of M/s. Bhagat Distributors is correct. There being no finding to that effect coupled with the fact that the petitioner was never even confronted with the reply submitted by the distributor M/s. Bhagat Distributors. Even the finding with regard to the sale of the said medicines, is perverse.

17. It is essential to notice the mandate of Section 19(3) of the Act, whereby the person who is distributing the drugs purchased from it a licensed distributor is exempted even from prosecution by the mandate of Section 19(3) of the said Act. In the absence of any finding that the sale was illegal at the instance of the distributor or at the instance of the petitioner, the finding to that effect cannot be sustained.

18. In the present case, where the serious infraction of the Drug Inspector in not following the mandate of Section 23, 24 and 25 of the Act, inasmuch as, the manner of drawing the sample, which is mandatory has not been followed. In the absence of sampling being strictly in accordance with the mandate of Section 23, any infraction on that count cannot be sustained.

19. For all the reasons recorded herein-above, the two orders cannot be sustained and are quashed.

20. The licence of the petitioner shall be treated to be valid till 08.11.2024 and on the petitioner moving an application for renewal, the same shall be considered in accordance with law.

21. The writ petition is **allowed.**

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**(2025) 2 ILRA 535**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 13.02.2025**

**BEFORE**

**THE HON'BLE ATTAU RAHMAN MASOODI, J.**  
**THE HON'BLE SUBHASH VIDYARTHI, J.**

Writ C No. 10671 of 2024

**M/s Al-Haq Foods Pvt. Ltd. ....Petitioner**  
**Versus**  
**State of U.P. & Ors. ....Respondents**

**Counsel for the Petitioner:**  
Abhinav Singh, Lalita Prasad Misra

**Counsel for the Respondents:**  
C.S.C., Ashok Kumar Verma

**A. Environmental Law – Cancellation of authorization – Slaughter house - Water (Prevention and Control of Pollution) Act, 1974 - Air (Prevention and Control of Pollution) Act, 1981.**

**The law does not compel a man to do that which he cannot possibly perform.** The order of the Hon'ble Supreme Court to prepare an index of the relevant laws for circulation to all the concerned so that the management of slaughtering the animals and slaughter house should be done more efficiently, can by no stretch of imagination be interpreted in a manner that the requirements of all the 24 laws mentioned in the compendium have to be fulfilled before establishment of a slaughter house. (Para 64, 66)