

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 98 of 2010 ()

AGAINST THE JUDGMENT IN WP(C).NO. 6876/2009 DATED 14-12-2009.
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APPELLANT/4TH RESPONDENT:

**M/S. ABBOTT INDIA LIMITED,
REGISTERED OFFICE 3-4, CORPORATE PARK,
SION TROMBAY ROAD, MUMBAI-400 071.**

**BY ADVS.SRI.P.VIJAYA BHANU,
SMT.M.M.DEEPA.**

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3:

- 1. MRS. ELSY PAUL, MANAGING DIRECTOR,
M/S.GEO PAUL & COMPANY, PHARMACEUTICAL DISTRIBUTORS,
FLOWER JUNCTION, T.D. ROAD, ERNAKULAM, COCHIN-682 035.**
- 2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 3. THE DRUGS CONTROLLER OF KERALA,
OFFICE OF DRUGS CONTROLLER, NEAR EYE HOSPITAL,
GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM.**
- 4. THE ASSISTANT DRUGS CONTROLLER,
ERNAKULAM CIVIL STATION, KAKKANAD. P.O,
COCHIN-682 030.**

**R1 BY ADVS. SRI.P.B.KRISHNAN,
SRI.K.JAYAKUMAR.
R2 TO R4 BY SR. GOVT. PLEADER SRI.P.I. DAVIS.**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-11-2015,
ALONG WITH W.A. NO.99 OF 2010, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

rs.

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.Nos.98 and 99 of 2010

Dated this the 20th day of November 2015

J U D G M E N T

Shaffique, J

These appeal arises from the common judgment dated 14/12/2009 in W.P.C.No.6876/2009 and 6838/2009. 4th respondent in these writ petitions are the common appellant herein. Since the appeals arise out of a common judgment, the appeals are also heard and decided together.

2. The 1st respondent in these appeals, who are hereinafter referred to as the petitioners, filed the writ petitions seeking for a direction to respondents 1 to 3, who are the State of Kerala, the Drugs Controller of Kerala and the Assistant Drugs Controller to compel the appellant to resume supply of drugs to the petitioners and for a further direction to prosecute all manufacturers, distributors and dealers who violate Clause 18 of the Drugs (Prices Control) Order, 1995 (hereinafter referred to as 'the 1995 Order').

3. The short facts involved in the writ petitions would disclose that the petitioners, being duly licensed distributors of

drugs, as defined under Article 2(e) of the Drugs Order, has complained that the appellant, who is the manufacturer of certain drugs, is not supplying the drugs, as per their demands. According to the petitioners, this is in violation of Clause 18(a) of 1995 order.

4. The appellant took a contention that they have their own stockists/distributors appointed in various places who can effectively supply the medicines on the requirement of the petitioners. It is contended that the petitioners were not licensed distributors of the appellant and they were only dealers, as per the 1995 order. The appellant further contended that they have entered into separate agreements with their stockists/distributors and sufficient quantity of medicines manufactured by them would always be available with them, to enable the dealers to purchase any medicine from the stockists/distributors. According to them, they do not directly deal with the dealers whereas they supply the manufactured medicines to the distributors/stockists who alone may supply to the dealers throughout the country.

5. The learned Single Judge, after considering the matter based on Clause 18(a) of the 1995 order, observed that

petitioners are entitled to get supply of drugs from the manufacturers. Still further, in paragraph 10, it was observed that the relationship of the stockists and the manufacturer does not entitle the manufacturer to refuse supply to the petitioners. It is further indicated that, at the most, it would enable the manufacturer to require that the petitioners have to buy from the stockists with reference to any term of the commercial deal between the manufacturer and its stockists. Finally, it was held that official respondents will act in terms with the directions issued and shall look into the complaints of violation of Clause 18 of the 1995 order. It is also indicated that the authority shall not interfere with the contractual obligation of the manufacturer and stockists or in any manner deal with the request of any dealer for being the stockist of any manufacturer. Further, it is clarified that the supply by the manufacturer to the dealers will be in terms with the entitlement as per the statutory provisions.

6. Learned counsel for the appellant submits that the judgment, in effect, requires modification since the learned Single Judge had to come to a finding that whenever there is a request from the dealer like the petitioners, the manufacturer is bound to

supply medicines to them.

7. On a perusal of the judgment and after having heard the learned counsel for the appellants as well as the learned Government Pleader, we are of the view that sufficient clarification has been made by the learned Single Judge in this regard. It is indicated in paragraph 10 that it is open for the manufacturer to direct the dealers to approach the stockists/distributors for supply of the medicine. However, taking into account the grievance urged on behalf of the appellant, we clarify that it shall be open for the manufacturer to direct the dealers, who make such demand directly, to the manufacturer to take supply from the stockists/distributors of the said manufacturer, which according to us, will be in compliance with the statutory provision under Clause 18(a) of the 1995 order.

With the above clarification, these writ appeals are dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/23/10/2015