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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2640/2015 and CM No.4731/2015 (interim directions)

RANBAXY LABORATORIES LTD.

..... Petitioner

Through: Mr. K. Datta, Mr. Ashish Verma and Mr.
Rahul Malhotra, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Rahul
Sharma, CGSC, Mr. Sumit Rajput, G.P. and Mr.
Vidhur Mohan, Advocates

+ W.P.(C) 2642/2015 and CM NO.4734/2015 (interim directions)

RANBAXY LABORATORIES LTD.

..... Petitioner

Through: Mr. K. Datta, Mr. Ashish Verma and Mr.
Rahul Malhotra, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Rahul
Sharma, CGSC, Mr. Sumit Rajput, G.P. and Mr.
Vidhur Mohan, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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15.04.2015

1. In these writ petitions, challenge is laid to a common order dated 03.02.2015 passed by the reviewing authority in terms of paragraph 22 of the DPCO 1995.

1.1 Before the reviewing authority, challenge was laid to the decision of W.P.(C) 2640/2015 & 2642/2015

page 1 of 4

the NPPA dated 10.01.2013. The order of NPPA is also a common order.

1.2 To be noted, the order of NPPA came to be passed on applications filed by the petitioner seeking price fixation / revision of retail prices in respect of two drug formulations, which are adverted to as Histec EVT Tablets and Fucibet Cream, available in, 15 gm aluminium tube.

2. The record shows that the petitioner had approached this court in an earlier round by way of the writ petition under Article 226 of the Constitution. The said writ petition was numbered as : WP(C) 7030/2014. The writ petition was disposed of vide order dated 15.10.2014 with the following operative directions :-

“..Essentially, the grievance of the petitioner relates to price fixation of its formulations and the petitioner’s grievance can be addressed by the appropriate authority by considering the review applications filed under paragraph 22 of the DPCO, 1995.

In the given circumstances, the present petition is disposed of with a direction that the review filed by the petitioner be considered by the Reviewing Authority within a period of eight weeks from today. The Reviewing Authority shall also consider the grievance of the petitioner with respect to price fixation as requested by the petitioner under paragraph 8(4) of the DPCO-1995.

It is clarified that nothing stated herein should be construed as an expression of opinion on the merits of the petitioner’s contention..”

3. The reviewing authority passed the impugned order, to which I have made a reference above, i.e., order dated 03.02.2015, in which while concluding, the following observations were made :-

“..Till such time the old DPCO is replaced by a new DPCO
W.P.(C) 2640/2015 & 2642/2015

NPPA should have continued to perform the functions assigned to it under previous DPCO. The arguments of the NPPA that the Authority decided to only those cases of price fixation / revision of formulations where bulk drug prices were recently revised upwards by NPPA has no merit as neither DPCO 1995 nor pricing Policy 2012 authorised NPPA to do so. However, since the DPCO 1995 has already been repealed and saved by the provisions of DPCO 2013 what has been done or omitted to have been done can be saved. Any fixation by NPPA on the basis of information in Form III amounts to a new action. No new action can be taken under provisions of DPCO 1995 after it has been replaced by DPCO 2013. The case of Abbott quoted by the petitioner is different as in that case it was a review order on the notification already issued by NPPA. In the instant case, the prices are yet to be fixed..”

4. The petitioner has approached this court, once again, by way of the instant writ petition saying that while the first part of the order, as extracted above, was correct, it is in the last part that the reviewing authority has committed an error.

5. The petitioners, in brief seek fixation / revision of retail prices in terms of paragraph 8(4) of the DPCO 1995.

6. Having regard to the apparent contradiction in the order of the reviewing authority, I had requested the learned ASG to take instructions in the matter.

6.1 The learned ASG has returned with instructions and, in his usual fairness, has indicated that the impugned order passed by the reviewing authority be set aside and the matter be remanded to the said authority to enable them to pass a reasoned order.

6.2 The learned ASG indicates that this ought not to be treated as a

precedent and the methodology suggested be confined to the peculiar facts and circumstances of the present case.

7. I tend to agree with the learned ASG. Accordingly, the impugned order is set aside. The matter is remanded to the reviewing authority to take a fresh decision in the matter. The reviewing authority will issue notice to the petitioner fixing the date, time and venue for hearing its duly authorised representative. Upon hearing, the reviewing authority will pass a reasoned order, which will be communicated to the petitioner. This exercise will be conducted with expedition though, no later than twelve weeks from today.

7.1 Needless to say, the petitioner will supply all documents / details which it may be called upon to file by the reviewing authority, within the prescribed time. In adjudicating upon the petitioner's application due regard will be given to the directions contained in the order dated 15.10.2014, passed in the earlier round which, inter alia, provides that the petitioner's claim that it falls within the provision of paragraph 8(4) of the DPCO 1995, will be examined by the reviewing authority.

4. With the aforesaid observations in place, the captioned petitions and the pending applications are disposed of.

RAJIV SHAKDHER, J

APRIL 15, 2015

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W.P.(C) 2640/2015 & 2642/2015

page 4 of 4