

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2950 OF 2014

Sun Pharmaceuticals Industries Limited
(erstwhile Ranbaxy Laboratories Limited)
& Anr.

.... Petitioners

Vs.

Union of India & Others

.... Respondents

Mr. Navroz Seervai, Senior Counsel with Mr. Ashish
Kamat, Mr. Pradeep Mane and Mr. Arun Unnikrishnan
i/by M/s. Crawford Bayley & Co. for the Petitioners.
Dr. G.R. Sharma with Mr. D.P. Singh for the Respondents.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 13, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioners are challenging a notification dated 2-4-2014 and the impugned order dated 16-9-2014, Annexures "A" and "B" to the writ petition, respectively, as well as the further order dated 10-12-2014 and finally the two impugned orders dated 26-2-2015 and 2-3-2016.

2. The petitioners have contended before us that their predecessor-in-title as also they are in the business of manufacturing pharmaceuticals. They have referred to the Drugs (Prices Control) Order, 2013 (for short, “the DPCO of 2013”) and the developments prior thereto. In the present petition, we are concerned with the fixation of the price of the drug Ciprofloxacin.

3. We need not go into the history of the prior litigations, for what we find and essentially is that the drug policy underwent a change and the new drug policy has been replaced by the National Pharmaceuticals Pricing Policy, 2012. The Drugs (Prices Control) Order, 1995 has since been repealed by the DPCO of 2013.

4. The basis for all this has been disclosed and thereafter the petitioners state that, in furtherance of the new DPCO of 2013 the National Pharmaceuticals Pricing Authority has issued fresh price fixation notification in respect of various

specified dosage and strength, as given in the National List of Essential Medicines, 2011. That forms the First Schedule to the DPCO of 2013, including Ciprofloxacin formulations.

5. This notification bearing SO No.1017E, dated 2-4-2014, has fixed the ceiling price for Ciprofloxacin Hydrochloride drops 0.30%. The illegality that is pointed out is that a review application dated 25-4-2014 was filed invoking para 31 of the DPCO of 2013. Respondent Nos.1 and 2 in their capacity as the Reviewing Authorities issued a notice to the petitioners fixing a personal hearing of this review application. The petitioners have pointed out as to what transpired pursuant to receipt of this notice. They have also pointed out as to how the review application was dealt with. They have also contended that the Reviewing Authority has passed an order on 16-9-2014. It is that order which has been carried forward to issue further price fixation orders on 10-12-2014, 26-2-2015 and 2-3-2016.

6. The petitioners' Senior Counsel Mr. Seervai submits that these orders have been challenged on various grounds. The

petitioners' Senior Counsel, however, in his opening arguments confined the challenge to the order dated 16-9-2014 by submitting that the order ought to have been passed by the officer who granted the personal hearing. In that regard, our attention is invited to page 213 (Annexure-S) of the paper-book by which it is stated, a personal hearing in the matter of the petitioners' review application would be before Shri R.K. Maggo, Director. The intimation for such personal hearing was given to the petitioners by an Under Secretary to the Government of India Shri Roshan Lal. The record note of discussion for the personal hearing from page 214 of the paper-book, according to Mr. Seervai, reveals as to how the representative made submissions before Shri Maggo. Naturally, the petitioners were expecting an order to be passed on the review application by the officer who heard them. However, Mr. Seervai invites our attention to page 54 of the paper-book to submit that what is treated as an order on the review application/petition dated 16-9-2014 is signed by Roshan Lal. It proceeds to state that personal hearing was granted before the reviewing authority,

but conveniently does not state as to who the authority was. The petitioner, therefore, complained that it is Mr. Roshan Lal who has passed the order impugned in the writ petition, but he was not the one who heard them personally. Mr. Seervai, therefore, presses into service the settled principle that one who hears must decide.

7. When this aspect was brought to the notice of Dr. Sharma, appearing for the respondents, he firstly submitted that what is sought to be impugned in the writ petition though styled as an order on the review application, is nothing but recording of the recommendations at the personal hearing. Those recommendations concern the issues involved in the review application and the examination thereof in the light of the record. During the hearing, certain notes were made of the discussions and other documents placed on record. The Government has to decide the review application. The recommendations that are forming part of the order, according to Dr. Sharma, cannot be said to be an order on the review application but merely a record of the recommendations.

8. Dr. Sharma, though not disputing the factual position with regard to the personal hearing by one officer but the order by another, submitted that the order passed cannot be said to be disposing of the review application.

9. Mr. Seervai controverts this fact by submitting that the Government/respondents themselves have acted on the basis that this is an order disposing of the review application and that is why further orders/notifications dated 10-12-2014, 26-2-2015 and 2-3-2016 have been issued. It is indeed not proper to go back and submit that these are recommendations and not a final order on the review application.

10. Be that as it may, we called upon Dr. Sharma to take instructions and to state as to whether the Government, in the light of the above confusion, is inclined to grant a fresh hearing to the petitioners on the review application and thereafter pass a reasoned order on it in accordance with law. Initially, Dr. Sharma sought time to take instructions but later on stated

that the Government is not averse nor will be opposing the suggestion from the Court with regard to a fresh hearing of this review application.

11. It is in the light of this statement made by Dr. Sharma that we proceed to quash and set aside the order dated 16-9-2014, copy of which is at Annexure-B to the writ petition. That is set aside on the footing that the Government itself does not treat it as a final order and which, in any event, does not satisfactorily deal with and dispose of the review application.

12. The Competent Authority to decide the review application shall be an officer not below the rank of Deputy Secretary in the Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Government of India. He shall grant a personal hearing to the petitioners and thereafter pass a reasoned order in accordance with law. All this shall be done as expeditiously as possible and within a period of three months from today.

13. We clarify that it would be open for the authority deciding the review application to pass such interim orders during the pendency of the review application or otherwise as are permissible in law.

14. Needless to clarify that every action in furtherance taken till date will have to abide by the order on the review application.

15. We clarify that we have not expressed any opinion on the merits of the review application and that should be decided uninfluenced by any observations or conclusions in the impugned order.

16. Needless to clarify that the petitioners initial review application will encompass all the further steps and the measures and the petitioners shall be heard on the merits of the initial orders/notifications and those issued subsequent to the impugned order dated 16-9-2014, which we have quashed and set aside.

17. The writ petition accordingly stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)