

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 315 OF 2017
IN
WRIT PETITION NO. 2700 OF 2014

Indian Pharmaceutical Alliance	}	
and Anr.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. Soli Cooper-Senior Advocate with
Ms. Ethel Pereira, Mr. Kedar J. Desai and
Mr. Aditya N. Raut i/b. M/s. Desai Desai
Carrimjee and Mulla for the petitioners/
applicants.

Dr. G. R. Sharma with Mr. D. P. Singh for
respondent nos. 1 to 3.

Mr. Kranti L. C. with Ms. Bhavana Mhatre
for respondent no. 4.

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

DATED :- OCTOBER 4, 2017

P.C. :-

1. Heard Mr. Cooper learned senior counsel appearing for the
petitioners and Dr. Sharma appearing for the respondents.

2. Mr. Cooper relies upon a communication, copy of which is at
page 45 of the paper book (Exhibit 'I') dated 19th September,
2014. In the submission of Mr. Cooper, this communication is

addressed to the learned Additional Solicitor General of India, who appeared on behalf of the respondents in this writ petition before this court and argued the matter. The respondents to this writ petition opposed the writ petition. If this communication was on record, which not only clarifies that the guidelines dated 29th May, 2014, but the order challenge in the writ petition dated 10th July, 2014 of the National Pharmaceutical Pricing Authority (NPPA) are not in consonance with para 19 of the Drug Control Order (DPCO), 2013, then, the writ petition would have worked itself out. Mr. Cooper would submit that if the position was brought to the notice of this court, the reliefs claimed by the petitioners would have been straight away granted. Meaning thereby, the order dated 10th July, 2014 would have been quashed in the light of this communication.

3. Dr. Sharma appearing for the respondents would submit that the present notice of motion is not maintainable. The order is sought to be recalled, but the court is requested to exercise jurisdiction conferred by section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908, namely, review jurisdiction. Therefore, this notice of motion should not be entertained.

4. On merits as well, Dr. Sharma would submit that such a communication dated 19th September, 2014 makes no difference. It was an order passed by the NPPA, which was under challenge. This communication does not say that the order will not survive or should be quashed. It merely conveys the view of the Government based on an opinion of the learned Additional Solicitor General of India. His opinion may say that the guidelines are not in consonance with para 19 of the DPCO, 2013. However, the Government, after careful consideration of this opinion, expressed a view that only the guidelines dated 29th May, 2014 are not in consonance with para 19 of the DPCO, 2013. The Government's view is not that the order of the NPPA is not in consonance with para 19 of the DPCO, 2013. It is only the guidelines which have been withdrawn. It is on that understanding that the matter was argued on 26th September, 2016 when the order under review was passed. Lastly, the order under review was challenged before the Hon'ble Supreme Court of India, but the challenge failed. For all these reasons, Dr. Sharma submits that we must dismiss the motion.

5. Having carefully perused the notice of motion, the prayers therein and the annexures thereto, we are of the firm opinion that the order passed by this court on 26th September, 2016 need

not be recalled. The learned Additional Solicitor General of India appearing for the respondents on that day argued the matter on the basis that only the guidelines are withdrawn and not the order of the NPPA dated 10th July, 2014 under challenge in the writ petition. Even the petitioners argued the matter on that basis. Now, it is not open to them to rely on some internal communication and seek to recall a reasoned order, which is also not interfered with by the Hon'ble Supreme Court of India. This mode of seeking a recall, which relief is granted only in exceptional circumstances, is not permissible in law. We find no basis for recalling our order. The request in that behalf is refused and the motion is dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)