

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

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The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.38108 of 2004

M/s.Malladi Drugs & Pharmaceuticals Limited,
rep. by its Managing Director Mr.M.Prashant,
No.52, Jawaharlal Nehru Road,
Ekkattuthangal,
Chennai-97. .. Petitioner

vs.

1. Government of India,
Ministry of Petroleum and Chemicals,
Department of Petro Chemicals,
rep. by its Secretary,
Sastri Bhawan,
New Delhi.
2. The Director (Drugs),
Department of Chemicals & Petrochemicals,
Ministry of Industry,
Government of India,
Sastri Bhawan,
New Delhi. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the Proceedings in F.No.17 (47)/2000/Div.IV/NPPA, dated 12.10.2004 on the file of the second respondent, quash the same.

For Petitioner : Mr.G.Perumal

For Respondents : No Appearance

ORDER

There are two respondents in the writ petition viz.,
(1) The Secretary, Ministry of Petroleum and Chemicals,

Department of Petro Chemicals, Sastri Bhawan, New Delhi and (2) The Director (Drugs), Department of Chemicals & Petrochemicals, Ministry of Industry, Government of India, Sastri Bhawan, New Delhi.

2. The second respondent before me viz., The Director (Drugs), Department of Chemicals & Petrochemicals, Ministry of Industry, Government of India has filed a counter-affidavit affirmed on 27.04.2005 on behalf of himself and also on behalf of the first respondent. There was no representation for the respondents before me, when the matter was called in the forenoon, though the learned counsel for the writ petitioner was present and was ready to argue the matter. The matter was passed over and called two hours later. There was no representation for the respondents, in the second call also.

3. As would be evident from the prayer in the writ petition stated supra, the petitioner has filed this writ petition, assailing an order dated 12.10.2004 made by the second respondent before me bearing reference F.No.17(47)/2000/Div.IV/NPPA (hereinafter referred to as "impugned order" for brevity, convenience and clarity).

4. A perusal of the impugned order shows that it pertains to overcharging in the sale of scheduled Bulk Drug Ephedrine Hcl over the notified price under Drugs (Price Control) Order 1987 (hereinafter referred to as "DPCO 87" for brevity, convenience and clarity).

5. The writ petitioner before me, which is a pharmaceutical company, while assailing the impugned order, would contend that the second respondent herein has issued guidelines being guideline No.1/89 dated 14.01.1089 in exercise of powers conferred by paragraph 25 of the DPCO 87 for the purpose of grant of exemption under paragraph 28 qua bulk drugs manufacturing units. According to the petitioner, such exemption is exemption from paragraph 3 of the said order which deals with bulk drugs as produced by a unit from the basic stage by a process of manufacture developed through its own research and development work for a specified period not exceeding five years.

6. Another ground on which the impugned order has been assailed by the petitioner is that price fixation under DPCO 87 would not be attracted when the customers want the pharma product in pulverized form as the petitioner has to process the drug and the same requires additional cost by way of processing charges, additional equipment charges, manpower etc.,

7. Most importantly, the petitioner has contended that the impugned order has been passed without giving an opportunity to the writ petitioner for putting forth its case. The writ petitioner would say that personal hearing ought to have been given. It is the further say of the writ petitioner that if they had been put on notice and if an opportunity of personal hearing had been granted, they (i.e., writ petitioner) would have highlighted before the authorities inter alia the above said two points viz., exemption and also the drug being given in a pulverized form taking it out of the rigours of DPCO 87.

8. This point of no opportunity and no personal hearing has been well articulated by the petitioner in ground (b) of the writ petition and the same can be usefully extracted. It reads as under:

"(b) I state that before passing the final order the 2nd Respondent ought to have given opportunity of personal hearing to the Petitioner. I state that if the opportunity would have been given the Petitioner Company would have given explanation and have satisfied the 2nd Respondent with respect to the claim of pulverisation charges."

9. As set out supra, the respondents have filed a common counter-affidavit, affirmed on 27.4.2005. A perusal of the counter-affidavit shows that the respondents have not met the above said ground (b) raised by the petitioner.

10. Considering the nature of the impugned order, nature of the possible defenses which the petitioner can take qua DPCO 87, I am of the view that the second respondent ought to have given notice to the petitioner and also given an opportunity of personal hearing before passing the impugned order. To be noted, if such notice has been issued and if opportunity of personal hearing had been given and if the second respondent had been convinced with the submissions of the petitioner, it may have refrained itself from issuing the impugned order. However, I do not enter into that arena and leave all issues in this regard open in the light of the order I propose to pass.

11. As already set out supra by me, I am convinced that in matters of this nature, the entity which is mulcted with rigours of DPCO 87 should necessarily be given an opportunity of personal hearing. I say this by drawing inspiration from the ratio of the Hon'ble Supreme Court that the requirement of personal hearing/opportunity has to be read into a relevant provision even if there is no such mandate to this effect in a provision. I refer to the authority for this proposition in the next paragraph.

12. It has been repeatedly held by the Hon'ble Supreme Court in a catena of judgments that an opportunity of personal hearing should be read into such proceedings even if the same has not been specifically provided for. [Vide (2012) 13 SCC 14 (Manohar v. State of Maharashtra)]

13. The impugned order bearing reference No.F.No.17(47)/2000/Div.IV.NPPA, dated 12.10.2004 issued by the second respondent is set aside on two grounds i.e., that the petitioner has not been put on prior notice and on the ground that the petitioner has not been given an opportunity of personal hearing.

14. However, it is made clear that it is open to the second respondent to issue a notice afresh to the petitioner, give an opportunity of personal hearing to the writ petitioner and thereafter proceed to pass an order depending upon the satisfaction of the second respondent. This order will not preclude the second respondent from doing so, if they choose to adopt that course. If the second respondent chooses to adopt this course, it is made clear that both parties will be entitled to take their respective stand uninfluenced by this order of this Court. In other words, the petitioner cannot press into service the order of this Court on merits. The petitioner can only press into service the order of this Court to the limited extent stated supra i.e., opportunity of personal hearing.

15. The writ petition is partly allowed to the extent indicated above. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To:

1. The Secretary,
Government of India,
Ministry of Petroleum and Chemicals,
Department of Petro Chemicals,
Sastri Bhawan, New Delhi.

2. The Director (Drugs),
Department of Chemicals & Petrochemicals,
Ministry of Industry,
Government of India,
Sastri Bhawan, New Delhi.

+1cc to Mr.G.Perumal, Advocate Sr. 52198

W.P.No.38108 of 2004

SCD(CO)
VR(17/8/2017)



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