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

+ W.P.(C) 7055/2016 & CM No.29023/2016

THE FEDERATION OF GUJARAT STATE  
CHEMISTS & DRUGGISTS ASSOCIATION  
THROUGH ITS PRESIDENT

..... Petitioner

Through: Ms Geeta Luthra, Senior Advocate  
with Mr Anshul Duggal, Advocate.

versus

COMPETITION COMMISSION OF INDIA  
& ORS

..... Respondents

Through: Mr Karan Singh Chandhiok and Ms  
Kalyani Singh, Advocate for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**20.07.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “1. To quash the order dated 17.11.2015 and 29.12.2014 passed by Respondent no. 1 under section 26(1) of the Act in case no.68 of 2015 and case no. 65, 71 and 72 of 2014 respectively;
2. To direct the Respondent no. 1 by appropriate writ/ order to stay the proceedings of the investigation conducted by the Respondent no. 2 in case no. 65, 71 and 72 of 2014 and 68 of 2015; and/or
3. To direct the Respondent no. 1 to recall/ review or reconsider its order dated 29.12.2014 in case no. 65, 71 and 72 of 2014 and order dated 17.11.2015 in case no. 68 of 2015

4. To direct Respondent no.1 to follow the due process of law before taking cognizance on any complaints filed against the Petitioner;
5. To direct Respondent No.1 to direct the DG to conduct the investigation in accordance with the due process of law and follow the principles of natural justice and fair trial;
6. To restrict Respondent no. 3 and its allied partners from filing frivolous complaints before the Commission and further direct Respondent no. 1 to take action against Respondent no. 3 for providing misleading information.”

2. The petitioner *inter alia* impugns an orders passed by the Competition Commission of India (hereafter 'CCI') under Section 26(1) of the Competition Act, 2002 (hereafter 'the Act').

3. Ms Luthra, learned senior counsel for the petitioner earnestly contended that the petitioner is being harassed by respondent no.3 who has been filing repeated complaints in his name or through other related entities in an attempt to coerce the petitioner (and its members) to succumb to his demands.

4. She further states that respondent no.2 (Director General, Competition Commission of India) is also hand in glove with respondent no.3 and the provisions of the Competition Act, 2002 are being abused by respondent no.3.

5. She has referred to a tabular statement to indicate that the complaint considered in Case no. 68 /2015 is similar to the complaints that had been filed earlier and were registered as Case Nos. 65/2014, 71/2014 and

72/2014. In the said cases, orders under Section 26(1) of the Act had been passed and the DG was directed to conduct investigations regarding the indicated violations of the Act. While, the said investigations were pending, respondent no.3 had caused another complaint to be filed which was registered as Case No. 68/2015 and the impugned order was passed directing the DG to investigate the allegations along with the investigations as ordered in Case no. 65/204, 71/2014 and 72/2014.

6. She had also pointed that prior to the aforesaid mentioned four cases another complaint had been filed which was registered as Case No.97/2013 and in that case also an order had been passed on 03.12.2015 under Section 26(1) directing investigation by the DG. She states that investigation in that matter was completed and objections to the report of the DG were filed. The said matter was heard and the CCI reserved the order in that matter on 12.07.2017.

7. It is pointed out by Mr Karan Singh Chandiok, the learned counsel for the CCI that insofar the orders passed in Case No. 68/2015, 65/2014, 71/2014 and 72/2014 are concerned the investigation is now over; a report has been circulated; and objections have been called for. That matter is now listed before the CCI on 08.08.2017.

8. Ms Luthra requests that the matter listed on 08.08.2017 be deferred on the principles of Section 10 of CPC and to avoid possible conflicting decisions.

9. The scope of interference in orders passed under Section 26(1) are highly restricted. The Supreme Court in the case of **Competition**

***Commission of India v. Steel Authority of India: (2010) 10 SCC 744*** has held that the orders under Section 26 of the Act are administrative orders and akin to one department giving direction to another. In this view, the scope of interference under Article 226 is highly restricted. It is only in cases where order is *ex facie* established to be arbitrary, capricious, unreasonable or violative of the Constitutional guarantees, that the court can interfere. In this case no such grounds are established. The mere fact that there are complaints which are clubbed together for investigation cannot be a ground for challenging an order passed by CCI under Section 26(1) of the Act.

10. In the present case, the investigation is already over, therefore, the relief as sought for by the petitioner, in any case, cannot be granted. The contention that the CCI ought to be directed to defer hearing of the matters scheduled on 08.08.2017 till the orders are passed in Case No.97/2013 on the principles of Section 10 of CPC is also bereft of any merit. The principles of Section 10 of CPC are not applicable in the given facts. This is not a case where a similar dispute between similar parties involving same issues is pending in two forums. The substratal rationale of section 10 of CPC is that if the issue raised in a subsequent suit is pending consideration between the same parties before a court of competent jurisdiction, then a decision of the same would also be determinative of the issue in the subsequent suit. It does not appear that this is the conceded position in this case. The proceedings under the Act have to be conducted in accordance with the provisions of the Act. There is no requirement for the CCI to defer the hearing scheduled on 08.08.2017 to await the decision in another matter,

which is to be rendered by them.

11. The contention that there is a possibility of conflicting decision is also speculative and there is no ground to believe that CCI would issue conflicting orders in future. Merely because the CCI takes up hearing in one matter while having reserved decision on another cannot result in any apprehension that CCI would deliver two conflicting decisions.

12. In the aforesaid circumstances, this court is not persuaded to accept that any interference with the proceedings before the CCI are called for. The petition is, accordingly, dismissed.

13. It is clarified that all contentions of the petitioner on merits are left open.

**JULY 20, 2017**  
**MK**

**VIBHU BAKHRU, J**