

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.04.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No. 25452 of 2003

Twenty First Century Pharmaceutical Pvt Ltd.,
No.360, SIDCO Estate,
Chennai-98

..... Petitioner

Vs.

- 1.National Pharmaceutical Pricing Authorities,
Department of Chemicals and Petrochemicals,
Ministry of Chemicals & Fertilizers,
Government of India,
2E/21, Jhandewalan Extension,
Link Road, New Delhi - 55
2. Medisearch Pharmaceuticals Ltd.,
(Formerly Medisearch Laboratories Pvt Ltd.),
No.37, Mylai Ranganathan Street,
T. Nagar, Chennai - 17

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records and quash the order F.No.21(164)2003/Div.IV/NPPA dated 24.07.2003 issued by the First Respondent.

For Petitioner : Mr.S. Ravi for
M/s Gupta and Ravi

For 1st Respondent: Mr.P. Ayyaswamy

ORDER

The First Respondent by Show Cause Notice dated 18.03.2003 issued to the Petitioner, informed that it had been reported that the Petitioner had marketed the Vivax Tablets (Pyrimethamine 25 mg+Sulphadoxine 500 mg) at a price of Rs. 7.00 (incl. of E.D) batch number MS- 013/Nov/1993) against the ceiling price of Rs. 3.45 (without ED) notified vide Gazette Notification No. S.O.400(E) dated 18.06.1993 for that

formulation and hence the Petitioner was called upon to explain reasons for non-compliance of that ceiling price and furnish certain details in terms of paras 14 and 15 of the Drugs (Price Control) Order, 1995, for further action. After receiving a reminder dated 12.05.2003 from the First Respondent, the Petitioner sent a reply dated 20.05.2003 and in the annexure thereto, it had been mentioned that the invoice price for the said tablet was Rs. 2.70. Thereafter, the First Respondent by Order F.No. 21(164)/2003/Div.IV/NPPA dated 24.07.2003, informed the Petitioner that it had been established that the Petitioner had violated the provisions of the Drug (Price Control) Order, 1987, and had charged higher price in excess of the notified price for the formulations and in pursuance thereof, the Petitioner was directed to deposit a total amount of Rs. 2,12,995/- (comprising of Rs.87,366/- towards overcharged amount and Rs. 1,25,589/- towards interest) before 22.08.2003, failing which action was to be taken against the Petitioner under the provisions of para 24 of Drug (Price Control) Order, 1995, read with Essential Commodities Act, 1955. Aggrieved thereby, the Petitioner has preferred this Writ Petition challenging the said order dated 24.07.2003 issued by the First Respondent.

2. It is accepted by the Learned Counsel for both parties that pursuant to the interim order dated 15.09.2003 in W.P.M.P. No. 31267 of 2003 in this Writ Petition passed by this Court, the Petitioner has deposited a sum of Rs. 1,80,000/- with the First Respondent in compliance of the condition imposed for grant of interim stay of the impugned order.

3. It is submitted by the Learned Counsel appearing for the Petitioner that the Petitioner is a registered Small Scale Industrial Unit manufacturing tablets and capsules under either loan license arrangements or third party arrangements, the nature of which is such that the Petitioner has a manufacturing facility which is utilized by various third parties who intend to enter into the business of marketing tablets, capsules and other formulations and based on their requirement the Petitioner manufactures the same for which manufacturing charges is alone collected by the Petitioner from those third parties, who have to take care of the entire responsibility of determining the composition, brand name, price and method of distribution, and the Petitioner has to merely ensure that the product manufactured meets the requirements of the license issued under the Drugs and Cosmetics Act, 1940 and the rules made thereunder. On that basis, it is urged that the Second Respondent had approached the Petitioner for manufacture of the said tablets for which the Petitioner had actually charged a sum of Rs. 3.24 per strip for two consignments under two Consignment Notes dated

05.07.1993 and 09.07.1993 for Rs. 46,202.40 and Rs. 33,721.00 respectively and that subsequently, the Petitioner did not manufacture the said product and after a lapse of ten years, the impugned proceedings had been initiated. It is further contended that since it is the Second Respondent, as distributor, who may have sold the tablet at the rate of Rs. 7.00 per strip, the First Respondent ought to have proceeded only against the Second Respondent for overcharging above the rate of Rs. 3.45 per strip and no liability could be fastened on the Petitioner in that regard.

4. Per contra, the Learned Counsel appearing for the First Respondent justified the impugned order pointing out that inasmuch as para 13 of the Drug (Price Control) Order, 1995, provides that liability for extra charging is on the manufacturer, importer or distributor, each of their liability has to be construed as joint and several with the other, and the Petitioner, by now representing to be only the manufacturer of the product and not its distributor, cannot escape from liability by merely pointing the finger at the Second Respondent for selling at a price in excess of the notified amount of Rs. 3.45 in this case.

5. After hearing both sides and perusing the materials placed on record, it is noticed that though it is mentioned in the impugned order that on the basis of the examination made by the First Respondent and information furnished by the Petitioner in the letter dated 20.05.2003 that it has been established that the Petitioner has charged higher price in excess of the notified price in violation of the provisions of the Drug (Price Control) Order, 1987, requisite particulars for arriving at that conclusion are conspicuously absent. It is needless to point out here that in order to fasten liability on the Petitioner for charging higher price in excess of the notified price, it was incumbent upon the First Respondent to disclose the material based on which it had come to the conclusion that the product had been sold at such excess price. That apart, when the Petitioner claims to have sold the product at a price lesser than the notified price, the First Respondent, as an adjudicating authority, ought to have considered the same in consonance with the principles of natural justice and given its specific findings on those aspects. Since the decision making process as borne out from the proceedings of the First Respondent is vitiated by the aforesaid infirmities apparent on the face of the record, the impugned order cannot be sustained. Hence, the order bearing F.No. 21(164)/2003/Div.IV/NPPA dated 24.07.2003 passed by the First Respondent is quashed. The matter is remitted to the First Respondent for fresh determination on merits in accordance with law, after affording an opportunity of hearing to the Petitioner and the Second Respondent, and pass

reasoned order thereon and communicate the same to the parties concerned and file a report of compliance in that regard with the Registrar (Judicial) of this Court on or before 31.08.2018. It is made clear that no view has been expressed by this Court on the correctness or acceptability of rival submissions made by the parties. The First Respondent shall continue to hold the sum of Rs. 1,80,000/- (which has been deposited by the Petitioner with the First Respondent in compliance of the condition imposed for grant of interim stay of the impugned order) for the time being and the decision regarding its refund or otherwise shall depend upon the outcome of the order to be passed by the First Respondent as indicated supra.

6. In the result, the Writ Petition is allowed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sr
To

National Pharmaceutical Pricing Authorities,
Department of Chemicals and Petrochemicals,
Ministry of Chemicals & Fertilizers,
Government of India,
2E/21, Jhandewalan Extension,
Link Road, New Delhi - 55

+1cc to Mr.P.Ayyaswamy, Advocate Sr.29809
+1cc to M/S.Gupta & Ravi Advocate Sr.29645

W.P.No.25452 of 2003

srg 08/06/2018

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