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

+ **W.P.(C) 11844/2018**

**ALL INDIA ORGANIZATION OF CHEMISTS AND
DRUGGISTS**

..... Petitioner

Through: Mr Arun Mishra, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Vinod Diwakar, CGSC with Mr
Kashish Bajaj, Advocate for R-1 and
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.10.2018

CM No.45855/2018

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition, *inter alia*, making several prayers. However, the learned counsel for the petitioner limits the relief in the present petition to prayers (b), (c) and (e), which are set out below:-

“b) necessary direction may please be given to Central and all State Authorities, if any unintended stock observed at distributors/ wholesaler and retailers; no coercive action shall be taken against such members;

c) order may please be issued in this matter and also Govt. may please be directed to issues guidelines in consultation with all stake holders including our organization in such matter for future incidences, so that our members shall not face undue hardship in such matter, for none of their fault;

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- e) the Respondents may be directed to compensate the losses incurred in reversal logistics along with loss of man power used for the same.”

3. The petitioner is, an association of Chemists and Druggists who are aggrieved by the notifications issued by the respondents under Section 26A of the Drugs and Cosmetics Act, 1940 (hereafter ‘the Act’), whereby certain Fixed Drug Combinations (FDCs) have been banned. The principal grievance of the petitioner relates to the difficulties in implementing the decision where drugs are banned with immediate effect. The learned counsel appearing for the petitioner states that any such action of the Central Government entails issues as to the logistics involved and organic return/destruction of the drugs. He, further, states that it is difficult to communicate with various retail chemists, who may be located in remote areas. He states that in addition, the dealers may have paid taxes on the sale of said drugs that are banned and, therefore, should be compensated.

4. This Court does not find any merit in the aforesaid contentions. Once a decision is taken by the Central Government to ban or proscribe sale and manufacture of a particular drug, the said decision is required to be implemented notwithstanding any logistics issues that may be faced by distributors or retailers. The Central Government is duly empowered to ban/proscribe manufacture of a drug for any of the reasons stated in Section 26A of the Act. The decision whether such ban should be implemented with immediate effect or not also rests with the Central Government. This is a matter that is required to be considered by the Central Government on case to case basis and no blanket order in this regard can be passed. Clearly,

there may be situations where it would be necessary for the Central Government to ensure that the sale of the drugs be banned immediately particularly where it is found that such drugs pose a serious risk to the health of consumers. In such case, there would be no justification for deferring the implementation of the decision. And, the druggists and chemists would have to comply with the decision of the Central Government.

5. Insofar as the prayer for compensation is concerned, no such order can be passed. An order under Section 26A of the Act is passed by the Central Government's in exercise of its statutory powers and no compensation for such exercise is provided. The said order also does not amount to expropriation of any property of the petitioner or its members so as to warrant payment of any compensation.

6. Insofar as the petitioner's grievance regarding payment of VAT and other taxes is concerned, the said taxes are levied and collected in terms of the relevant statutes and the members of the petitioner would be at liberty to apply for refund of such taxes, if permissible, in terms of those statutes.

7. The petition is, accordingly, dismissed. The pending application is disposed of.

VIBHU BAKHRU, J

OCTOBER 31, 2018
MK