

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

WRIT PETITION NO. 2527 OF 2015

M/s. Zydus Healthcare Limited & Anr.	...Petitioners
V/S	
Union Of India & Ors.	Respondents

**WITH
NOTICE OF MOTION NO. 70 OF 2019**

National Pharmaceutical Pricing Authority	... Applicant
IN THE MATTER BETWEEN	
M/s. Zydus Healthcare Limited & Anr.	... Petitioners
V/s	
Union of India & Ors.	... Respondents.

Mr. Soli Cooper, Senior Counsel a/w. Aditya N. Raut i/b. M/s. Desai Desai Carrimjee & Mulla for the Petitioners.
Mr. M. S. Bhardwaj a/w. Mr. Pradeep S. Jetly for the Respondents.

**CORAM : A. A. SAYED &
PRAKASH D. NAIK, JJ.**
DATED : 6th August, 2019

P.C.:

Invoking Article 226 of the Constitution of India, the Petitioner has filed this Petition seeking the following reliefs:

“a. A Writ of Certiorari or a Writ in the nature of the Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, declaring that the Internal Guidelines of Fixation / Revision of prices of Scheduled and Non-Scheduled Formulations dated 29th May, 2014 and the Office Memorandum dated 14th July, 2014 are contrary to Para 19 of the DPCO-2013 which can be invoked only under “extra-ordinary circumstances”, is void and

unenforceable and any action taken pursuant to the said Internal Guidelines on Fixation / Revision of prices of Scheduled and Non-Scheduled Formulations dated 29th May, 2014 and the Office Memorandum dated 14th July, 2014 are also void and unenforceable;

b. A Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India, prohibiting the Respondents or its agents, officers, servants and subordinates from taking, initiating or maintaining any action against the Petitioner No. 1 pursuant to the Internal Guidelines on Fixation / Revision of prices of Scheduled and Non-Scheduled Formulation dated 29th May, 2014;

c. A Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records and proceedings pertaining to the passing of the Impugned Orders dated 10th July, 2014 and after examining the legality and validity thereof, be pleased to quash and set aside the same;

d. A Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India, prohibiting the Respondents by themselves, their agents, officers, servants and subordinates from in any manner acting upon, or in furtherance of, or proceeding upon the impugned orders dated 10th July, 2014 hereto;

e. A Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records and proceedings pertaining to the passing of the Impugned Show Cause Notices dated 30th March, 2015, 6th April, 2015 and 6th April, 2015 and after examining the legality and validity thereof, be pleased to quash and set aside the same;

f. A Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India, prohibiting the Respondents by themselves, their agents, officers, servants and subordinates taking initiating or maintaining any action against the Petitioner No. 1 pursuant to the Impugned Show Cause Noticed dated 30th March, 2015, 6th April, 2015 and 6th April, 2015;"

2. During the pendency of the present Petition, Writ Petition No. 2700 of 2014 (Indian Pharmaceutical Alliance & Anr. V/s Union of India and Ors.) raising the same issues has been decided by the Division Bench of this Court by judgment and order dated 26th September, 2016.

3. The issues raised in the present Petition is squarely covered by the said judgment and order of the Division Bench of this Court dated 26th September, 2016 in Writ Petition No. 2700 of 2014 as well as the order dated 4th October, 2017 passed in the Notice of Motion No. 315 of 2017 in the Writ Petition 2700 of 2014. The Notice of Motion No. 315 of 2017 was taken out in the said Writ Petition No. 2700 of 2014 seeking to recall the judgment and

order dated 26th September, 2016 on the basis of the communication dated 19th September, 2014 furnished to the Petitioners under the Right to Information Act. According to the Petitioners, the said letter dated 19th September, 2014 was deliberately not produced before the Court by the Respondents which prevented the Court from arriving at a fair decision based on correct and complete facts.

5. While considering the Notice of Motion No. 315 of 2017 for recall of the judgment and order dated 26th September, 2016 in Writ Petition No. 2700 of 2014 the Division Bench of this Court passed the following order:

“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."

6. Having heard learned Senior Counsel for the Petitioners

and learned Counsel for the Respondents we are unable to agree with the contention of learned Senior Counsel for the Petitioners that Notice of Motion No. 315 of 2017 (for recall the judgment and order dated 26th September, 2017) was dismissed only on technical grounds and that this Court can always examine the issues raised in the present Writ Petition after taking into consideration the communication dated 19th September, 2014. It is not in dispute that the order dated 4th October, 2017 passed in Notice of Motion No. 315 of 2017 as well as the judgment and order dated 26th September, 2017 in Writ Petition No. 2700 of 2014 were separately challenged before the Apex Court and the Special Leave Petitions were dismissed. In our view, it is not open for this Court to re-examine the issues raised in the Writ Petition and the issues raised would be covered by the aforesaid judgment dated 26th September, 2017 in the Writ Petition No. 2700 of 2014 and order dated 4th October, 2017 in the Notice of Motion No. 315 of 2017. In any event we find that the Petitioners have not amended the Writ Petition to incorporate any averments as regard the letter dated 19th September, 2014.

7. The Writ Petition is accordingly dismissed. There shall be no order as to the cost. Notice of Motion No. 70 of 2019 does not survive and to stand disposed of.

8. At the request of learned Counsel for the Petitioners, we direct that the ad-interim order dated 11th May, 2015 shall continue to operate for the period of six weeks from the date this order is uploaded.

(PRAKASH D. NAIK,J.)

(A.A.SAYED, J.)