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

+ **W.P.(C) 1191/2018 & CM APPL. 4977/2018**

SANOFI INDIA LTD. AND ANR.

..... Petitioners

Through Mr Manoj, Advocate with Ms Aparna
 Sinha, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr Kirtiman Singh, CGSC with
 Mr Prateek Dhanda, Mr Waize Ali Noor,
 Ms Shruti Dutt, Advocates .
 Mr Anil Soni, CGSC for UOI.

31.

+ **W.P.(C) 1233/2018 & CM APPL. 5107/2018**

SANOFI INDIA LTD. AND ANR.

..... Petitioners

Through Mr Gopal Subramaniam, Senior
 Advocate with Mr Manoj, Ms Aparna Sinha,
 Mr Jayvardhan Singh, Mr Atin Kumar,
 Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr Kirtiman Singh, CGSC with
 Mr Prateek Dhanda, Mr Waize Ali Noor,
 Ms Shruti Dutt, Advocates
 Mr Anil Soni, CGSC for UOI.

\$~32

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W.P.(C) 1234/2018 & CM APPL. 5111/2018

SANOFI INDIA LTD. AND ANR.

..... Petitioners

Through Mr Manoj, Advocate with Ms Aparna
 Sinha, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
 Through Mr Kirtiman Singh, CGSC with
 Mr Prateek Dhanda, Mr Waize Ali Noor,
 Ms Shruti Dutt, Advocates
 Mr Anil Soni, CGSC for UOI.

\$~33

+ W.P.(C) 1235/2018 & CM APPL. 5115/2018

SANOFI INDIA LTD. AND ANR. Petitioners
 Through Mr Manoj, Advocate with Ms Aparna
 Sinha, Advocate.
 versus

UNION OF INDIA AND ANR. Respondents
 Through m Mr Kirtiman Singh, CGSC with
 Mr Prateek Dhanda, Mr Waize Ali Noor,
 Ms Shruti Dutt, Advocates

\$~34

+ W.P.(C) 1236/2018 & CM APPL. 5117/2018

SANOFI INDIA LTD. AND ANR. Petitioners
 Through Mr Manoj, Advocate with Ms Aparna
 Sinha, Advocate.
 versus

UNION OF INDIA AND ANR. Respondents
 Through Mr Kirtiman Singh, CGSC with
 Mr Prateek Dhanda, Mr Waize Ali Noor,
 Ms Shruti Dutt, Advocates
 Mr Anil Soni, CGSC for UOI.

\$~35

+ W.P.(C) 2270/2018 & CM APPL. 9412/2018

SANOFI INDIA LTD. AND ANR. Petitioners
 Through Mr Manoj, Advocate with Ms Aparna
 Sinha, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through Mr Kirtiman Singh, CGSC with
Mr Prateek Dhanda, Mr Waize Ali Noor,
Ms Shruti Dutt, Advocates.
Mr Vikas Mahajan, CGSC with Mr Aakash
Varma, Mr Deepak Goyal, Advocates for UOI.

\$~36

+ W.P.(C) 2271/2018 & CM APPL. 9414/2018

SANOFI INDIA LTD. AND ANR. Petitioners
Through Mr Manoj, Advocate with Ms Aparna
Sinha, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through Mr Kirtiman Singh, CGSC with
Mr Prateek Dhanda, Mr Waize Ali Noor,
Ms Shruti Dutt, Advocates.
Mr Vikas Mahajan, CGSC with Mr Aakash
Varma, Mr Deepak Goyal, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.05.2019

1. The present petitions have been filed impugning separate demand notices raised by National Pharmaceutical Pricing Authority (NPPA) with regard to the overcharging in respect of certain formulations. It is seen that the said demands are based on certain data purportedly obtained from "Pharmatrac". Admittedly, the fact that data received from Pharmatrac would be relied upon was never put to the petitioner (Sanofi India Ltd.) and the petitioner had no opportunity to deal with the same. Also, there is no

reference to Pharamatrac in the show-cause notices issued to the petitioner.

2. It is also important to note that although the demands are based on data collected from Pharamatrac, there is no material on record to show the manner on the basis of which data has been collected. Apart from the tabular statement indicating the figures received from Pharamatrac, the respondents themselves are clueless as to the manner in which the said data has been collected.

3. It is also seen that there are several contentious issues raised by the petitioner in these petitions as well as in its responses to the show cause notices, but none of them have been considered. First of all, it is confirmed by the petitioner that it did not manufacture or sell any of the formulations in question after the notifications were issued under paragraph 19 of the DPCO-2013, at a price above the notified price. The said contention does not appear to have been considered by the respondent (NPPA) at all. It has proceeded to fix the demand on the basis of sales reported by Pharamatrac (which presumably relate to sales made by retailers).

4. Secondly, the petitioner had also asserted that it had recalled the batches of formulations that had been sold by it prior to the date of the notifications in question and certain formulations have been received back and reprinted prices were affixed. This too does not appear to have been taken into account by the respondent.

5. Thirdly, it is also the petitioner's contention that in view of the decision of the Division Bench of this Court in *Cipla Limited & Anr. v. Union of India & Ors. : 4374/2013 decided on 24.11.2015*, issuance of Form V in respect of the formulations that had already been sold by it would

be sufficient compliance and it was not obligatory for the petitioner to recall the products sold by it prior to the date of notifications. No view in this contention appears to have been taken by the respondent as well.

6. In addition to the above, the petitioner has also contended that it had not over charged any amount and therefore, no recovery can be made against the petitioner as it had complied with all reasonable requirements for ensuring that the ceiling price, as fixed, is implemented. This contention also appears to have been ignored.

7. After some arguments Mr Kirtiman Singh, learned counsel appearing for the respondents fairly states, on instructions, that the impugned demand notices may be set aside and the matter be remanded to consider it afresh.

8. In view of the above, this Court is refraining from expressing any opinion on the matter at this stage on the issues as raised in this case. The impugned notices are set aside and the matter is remanded back to the NPPA for considering it afresh in accordance with law. The NPPA shall, in addition to the petitioner's response to the show cause notices, consider the contentions raised by the petitioner in these petitions as well notwithstanding its stand in the counter affidavits.

9. The petitions are disposed of in the above terms. All pending applications are also disposed of.



VIBHU BAKHRU, J

MAY 16, 2019/pkv