

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.21854 of 2013  
and M.P.Nos.1 and 2 of 2013

Federation of South Indian Pharmaceutical  
Manufacturers Association  
Rep. by its Secretary General  
Mr.R.Murugan  
Block - D1, 'Baid Metha Complex'  
No.183 (New No.16), Anna Salai  
Little Mount, Saidapet, Chennai - 600 015 ... Petitioner

Vs.

1. Union of India  
Rep. by its Secretary  
Ministry of Chemicals & Fertilizers  
Department of Pharmaceuticals  
Sasthri Bhawan, Dr.Rajendra Prasad Road  
New Delhi

2. National Pharmaceutical Price Authority  
Ministry of Chemicals & Fertilizers  
Sastri Bhawan, Dr.Rajendra Prasad Road  
New Delhi ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned clauses 13(1), (2), 16(4) and 24(1) of the Drug [Prices Control] Order 2013 published in the Gazette of India, Extraordinary Part-II, Section-3, Sub Section (ii) dated 15.5.2013 of the 1st respondent and quash the same.

For Petitioner : Mr.Ramesh Venkatachalapathy  
For Respondent : Mr.K.Ramanamoorthy, CGSC

O R D E R

The petitioner has sought for a writ of certiorari, to call for the impugned clauses 13(1), (2), 16(4) and 24(1) of the Drug [Prices Control] Order 2013 published in the Gazette of India, Extraordinary Part-II, Section-3, Sub Section (ii) dated

15.5.2013 of the 1st respondent and quash the same.

2. The Petitioner Federation consists of Pharmaceutical Associations of Tamil Nadu, Kerala, Karnataka Puducherry and Andhra Pradesh. Petitioner Federation was formed with the object of educating all those who are interested in the pharmaceutical industry to take steps to sponsor, create public opinion, to bring together the members of the industry Association into a body, to run the mutual assistance on industrial problem, to make representation to the Government, State and Central, to arrange exhibition and to protect the general and commercial and business interests of the members. According to the petitioner, clauses 13(1), (2), 16(4) and 24(1) of the Drug [Prices Control] Order, 2013 published in the Gazette of India, Extraordinary Part-II, Section-3, Sub Section (ii) dated 15.5.2013 of the 1st respondent, are totally unreasonable and hence the above relief.

3. Learned counsel for the petitioner submitted that, similarly placed companies, namely CIPLA Ltd and another have filed a writ petition in W.P.(C) No.4374 of 2013 before the Delhi High Court and the Delhi High Court, by an order dated 26.7.2013, restrained the respondents therein from taking any coercive measures against the manufacturers of the formulations.

4. Today, when the matter was taken up for hearing, learned counsel for the petitioner submitted that the Delhi High Court has passed a final order on 24.11.2015 disposing of W.P.(C) 4374/2013 and other writ petitions holding that the demand notices may be treated as show cause notices and that the petitioners therein were directed to file their reply, within a stipulated time. It was further directed therein that the show cause notice shall be disposed of in accordance with law after considering the replies submitted by the petitioners therein, and also by affording an opportunity of personal hearing to them and till such time, no coercive action shall be taken by the respondents. It was further held therein that the Delhi High Court did not want to go into the question with regard to the constitutional validity of the provisions which have been challenged in those writ petitions. In view of the above development, the learned counsel for the petitioner represents that the writ petition filed by them before this court, has become infructuous.

5. The learned Central Government Standing Counsel has affirmed the contention of the petitioner and has also produced a copy of the judgment passed by the Delhi High Court in W.P. (C) No.4374/2013 etc. batch. For brevity and for disposal of the present writ petition, Paragraph Nos.10 to 12 of the said judgment are reproduced hereunder:

" 10. From the above extract, it is clear

that notice is not just a notice indicating a provisional demand but, the manufacturer has been required to deposit the amount demanded within the stipulated period along with documentary evidence otherwise the matter would be referred to the collector for recovery of the amount as arrears of land revenue under the Essential Commodities Act, 1955 without any further correspondence with the company. Similar demand notices have been issued to the other petitioners as well.

11. The learned counsel for the respondents submit that the said demand notices may be treated as show cause notices. We direct accordingly. The petitioners would, therefore, be entitled to file their replies to the said show cause notices within four weeks from today. The show cause notices shall be disposed of in accordance with law after considering the replies submitted by the petitioner as also after granting an opportunity of personal hearing to the petitioners in their individual cases. The same shall be disposed of in accordance with the observations made in this order as also the portions referred to in this order pertaining to the observations of the Supreme Court in Glaxosmithline Pharmaceuticals Limited v. Union of India reported in (2014) 2 SCC 753. No coercive action shall be taken by the respondents till the disposal of the show cause notices.

13. In the view we have taken in the backdrop of the directions given above, we do not deem it necessary to go into the question with regard to constitutional validity of the provisions which have been challenged in these writ petitions. All the pending applications and the writ petitions stand disposed of."

6. In view of the representation made by the petitioner and in the light of the order passed by the Delhi High Court in W.P. (C) No.4374/2013 dated 24.11.2015, the instant writ petition has become infructuous. Accordingly, the present writ petition is dismissed as infructuous. No costs. Connected M.Ps are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Asr

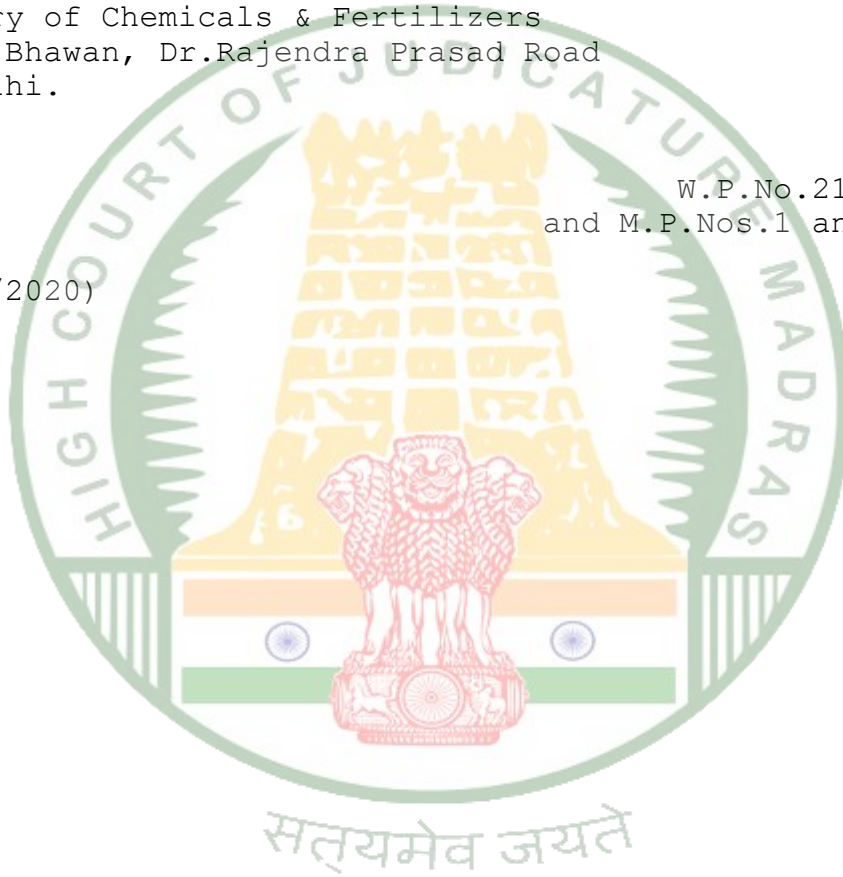
To

1.The Secretary,  
Union of India,  
Ministry of Chemicals & Fertilizers,  
Department of pharmaceuticals,  
Sasthri bhavan, Dr.Rajendrapasad Road,  
New Delhi.

2.National Pharmaceutical Price Authority  
Ministry of Chemicals & Fertilizers  
Sastri Bhawan, Dr.Rajendra Prasad Road  
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LN(CO)  
RMP(19/11/2020)



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