

Priya

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1178 OF 2017**

**PRIYA
RAJESH
SOPARKAR**

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PRIYA RAJESH
SOPARKAR
Date: 2021.12.04
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Pfizer Limited and Anr

...Petitioners

Versus

Union of India and Anr

...Respondents

Mr Navroz Seervai, Senior Advocate *with Mr Sharan Jagtiani, Senior Advocate, Mr Sujit Lahoti and Mr M Paperwala i/b M/s Sujit Lahoti & Associates, for the Petitioners.*

Mr Advait M Sethna *with Mr DP Singh, Mr Sandeep Raman, Mr Eshaan Saroop and Mr Rangan Majumdar, for the Respondents- Union of India.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 3rd December 2021**

PC:-

1. We have heard this matter at some length. Mr Seervai has completed his arguments. Mr Sethna for the Respondents has commenced his arguments.

2. We are satisfied that the impugned order dated 19th September 2016 by the Deputy Secretary of the Government of India, Ministry of Chemicals and Fertilizers, Department of Pharmaceuticals, Exhibit A at page 200 will require a

reconsideration by the authority. It will thus have to be quashed and set aside and remanded to the authority. Consequently, the impugned demand notice at Exhibit AM at page 212 dated 29th March 2017 (there is some inconsistency in the page numbering; in our record it is at pages 212 to 213) will also need to be quashed and set aside pending a reconsideration.

3. Both the sides agree that reasons need not be given for this order.

4. A few further directions are necessary.

(a) At the fresh hearing, both sides will be entitled to rely on all the materials that have been filed in the present Writ Petition.

(b) At the fresh hearing of the review, the authority will specifically direct his or her attention to the question of the reported or detected price of Benadryl Syrup 12.5 mg 100 ml, in view of the undisputed fact that the original report by an organization called ORG-IMS was later accepted by that very organization to be inaccurate. This requires the authority to address the question of whether or not there is independent material available to the Ministry in regard to the price of Benadryl Syrup before its price increase; and, second, whether the Ministry is entitled to rely on the ORG-IMS reported price in view of subsequent events

and the acceptance by ORG-IMS that its first report was incorrect.

- (c) The authority will also apply its mind to the question of whether the Benadryl Cough Formula, because it shares some common API or ingredients, can be equated with Benadryl Syrup 12.5 mg 100 ml for the purpose of price fixation, and, consequently, whether the actual nomenclature is or is not material.
- (d) If the Ministry proposes to rely on any additional or supplementary material in relation to the second question noted above, copies will be furnished to the Petitioners.
- (e) Whether or not the Ministry relies on such additional material, the Petitioners will be entitled to file a short additional written submissions in regard to the second question noted in (c) above.

5. We request the authority to grant both sides a personal hearing by Advocates (but not designated Senior Counsel) and to pass a reasoned order thereafter as expeditiously as possible.

6. We dispose of the Petition on this basis while expressing our gratitude to both sides for their co-operation.

7. It goes without saying that all contentions are expressly kept open.

8. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)