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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9959 OF 2022**

Omni Protech Drugs Private Limited Petitioner.
V/s
The Hon'ble Minister,
Ministry of Food & Drug
Administration and Others Respondents

**ALONGWITH
WRIT PETITION NO.9960 OF 2022**

M/s Pfizer Limited Petitioner.
V/s
The Hon'ble Minister,
Ministry of Food & Drug
Administration and Others Respondents

Mr. Janak Dwarkadas, Senior Counsel a/w Mr. Kunal Dwarkadas a/w
Mr. Rahul Dwarkadas, Ms. Sukhada Wagle, Ms. Sanaya Contractor i/b
Veritas Legal for the Petitioner in both the above Petitions.
Mr. S.H. Kankal, AGP for the Respondents/State.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 22, 2022

P.C.:-

- 1] Leave to amend in both these Petitions.
- 2] Heard.
- 3] Both these Petitions can be conveniently disposed of by a common order, as the issue involved therein is identical.

4] Order impugned is passed by the Appellate Authority (State Government) in exercise of power under Rule 85(3) of the Drugs and Cosmetics Act, 1940 (For short “said Act”) whereby appeal preferred by the Petitioner/license holder under the said Act came to be dismissed. Said appeal was directed against the order dated 23/3/2018 passed by the Respondent No.2 – Joint Commissioner/Licensing Authority, Food and Drug Administration. By the first order, said Licensing Authority has noticed certain serious shortfalls on the part of the Petitioner in the matter of production of certain licensed drugs and accordingly punishment in exercise of powers under Rule 85(2) of Drugs and Cosmetics Rules, 1945 was imposed, thereby directing suspension of the license of the Petitioner for two days i.e. 18/5/2018 and 19/5/2018. Statutory appeal under sub-rule (3) of Rule 85 was dismissed vide order impugned dated 1/4/2021.

5] Contentions of Mr. Janak Dwarkadas, learned Senior Counsel appearing for the Petitioner are, order impugned passed by the Appellate Authority is not sustainable, as it is a non-speaking order. According to him, right of appeal is a statutory right and the Appellate Authority is expected to re-appreciate the entire gamut of the matter and pass a reasoned order. He would urge that order impugned passed by the Appellate Authority does not reflect analysis of consideration of claim put-forth by the Petitioner/Appellant. As such, according to him, order impugned suffers from violation of principles

of natural justice.

6] Mr. Kankal, learned AGP, while opposing the aforesaid prayer would urge that the order is just and proper and in tune with the order dated 23/3/2018 passed by the Licensing Authority. He would urge that since the Licensing Authority has noticed violation of in-house specifications of instrument, same has prevailed before the Appellate Authority for confirming the order of Licensing Authority. He sought dismissal of the Petition.

7] I have appreciated aforesaid submissions.

8] Fact remains that Petitioner was served with show-cause notice dated 5/1/2018. According to the Petitioner, explanation tendered to the said show cause notice was duly considered and dealt with by the Licensing Authority while ordering suspension of license. Considerations in the order of suspension are permitted to be assailed before the Appellate Authority. It cannot be disputed that position in law that right of appeal is a statutory right and Appellate Authority is vested with powers to re-appreciate entire facts and submissions and record its finding in analytical manner is quite well settled. Upon perusal of the order of Appellate Authority (State Government), what can be noticed is, Appellate Authority in most cryptic way has passed the order impugned dated 1/4/2021. Submissions of the Petitioner were considered in one line, so also result thereof endorsing the view expressed by the Licensing Authority, suspending license without

giving reasons much less without re-appreciating the pleadings and submissions. Mr. Dwarkadas was justified in claiming that the Appellate Authority has failed to exercise appellate power in its entirety. Fact remains that what was expected of the Appellate Authority is to consider the grounds which are raised in the appeal, material placed before it and test the order of Licensing Authority in the said backdrop by recording findings on facts and submissions in an analytical manner.

9] In view of above, this Court is left with no other option but to observe that non-speaking order of the Appellate Authority dated 1/4/2021 is not sustainable and is liable to be quashed and set aside.

10] Order of the Appellate Authority dated 1/4/2021 is hereby quashed and set aside. As a consequence, order of cancelling license of the petitioner dated 22/7/2022 is also quashed and set aside.

11] Petitioner shall appear before the Appellate Authority on 12th September 2022 with its written notes of arguments. This Court expects the Appellate Authority to decide the Appeal of the Petitioner after giving the Petitioner opportunity of hearing, expeditiously

12] Both these Petitions stand allowed in the above terms.

(NITIN W. SAMBRE, J.)