Neutral Citation Number 2022/DHC/004368
$~4

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

% *Date of Decision: 13th October, 2022*

+ **W.P.(C) 3269/2016 & CM No.13920/2016**

WOCKHARDT LIMITED AND ANR ..... Petitioners
Through: Ms. Gaman Ahsan & Ms. Swastika Chakravarti, Advs.

versus

UNION OF INDIA AND ANR ..... Respondents
Through: Mr. Kirtiman Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(ORAL)*

1. The petitioners have filed the present petition, inter alia, praying as under:

> "(a) Declare that Note (e) of the Notification No. S.O. 644(E) dated 2.3.2016 and Note (b) of Notification No, S.O. 1253(E) dated 29.3.2016 on their true meaning, scope and interpretation do not require a manufacturer of scheduled formulations selling the said formulations at a price lower than the revised ceiling prices, to make a further reduction taking into account the decline in the WPI (which factor of decline has already been taken into account while notifying the revised ceiling prices);
>
> Or Alternatively;

In the event that the provisions of the DPCO 2013, Note (e) of the Notification No. S.O. 644(E) dated 2.3.2016 and Note (b) of Notification No. S.O 1253(E) dated 29.3.2016 are interpreted to mean that the manufacturers of scheduled formulations shall make a further reduction in the selling price taking into account the decline in the WPI, then declaring that the proviso to paragraph 13(3) and paragraph 16(4) of DPCO 2013 read with Note (e) of Notification No. S.O. 644(E) dated 2.3.2016 and Note (b) of Notification No. S.O. 1253(E) dated 29.3.2016 are illegal, arbitrary, perverse, ultra vires, unconstitutional and violative of Articles of 14 and 19(1)(g) of the Constitution of India.

(b) Declare that Notification No. S.O. 644 (E) dated 02.03.2016 and Notification No. S O. 1253 (E) dated 29.03.2016 are not applicable to formulations which were taken out from Schedule 1 of the DPCO 2013, vide Notification dated 10.03.2016 issued by the Respondent No.1 and consequently declare that the Office Memorandum dated 6.4.2016 is illegal, ultra vires and unconstitutional and set aside/quash the same."

2. Insofar as the petitioners' challenge to the Office Memorandum dated 06.04.2016 is concerned, this Court had noted in the order dated 01.11.2018 that the said challenge does not survive in view of the order dated 10.01.2017, passed by the Government of India, directing withdrawal of the said Office Memorandum. This Court had also noted that the petitioners' challenge to Note (e) of the Notification dated 02.03.2016 had also been addressed by the order dated 10.01.2017, whereby the Government of India directed that Note (e) be deleted with immediate effect.

3. In view of the above, the controversy in the present petition is now confined to determine whether the order dated 10.01.2017 is required to be made operative from the date of the Notification dated 02.03.2016. This is because in terms of the order dated 10.01.2017, the same would be effective from that date and not prior thereto.

4. The second question to be addressed is regarding the petitioners' challenge to Note (b) of the Notification dated 29.03.2016, which is in similar terms as Note (e) of the Notification dated 02.03.2016.

5. NPPA had issued the Notification dated 02.03.2016 revising prices of certain schedule formulations in the context of the reduction in the Wholesale Price Index (WPI). In terms of the said Notification the ceiling price of certain formulations were required to be reduced in view of the reduction in the WPI with effect from 01.04.2016. The said Notification included certain Notations. For the purpose of the present petition Note (e) to the said Notification is relevant and the same is set out below:

> "(e) All the manufacturers of above mentioned scheduled formulations (**as contained in table in notification SO 644(E), dt. 2.3.2016)** having MRP lower than the ceiling price specified in column (5) in the above table (**table in notification SO 644(E), dt. 2.3.2016)** plus local taxes as applicable, if any, shall make corresponding reduction in the maximum retail prices as per the provision of paragraph 16(4)."

6. It is the petitioners' contention that paragraph 16(4) of the

Drugs (Prices Control) Order, 2013 empowered NPPA to fix the ceiling price but could not direct further reduction of prices, which were otherwise within the ceiling limit.

7. In the said circumstances, the prices of formulations that were within the ceiling limit, as reduced, would not require to be reduced further on account of the said Notification. The said issue was considered by the Government of India in its order dated 10.01.2017. The relevant extract of the said order is set out below:

> "6. **Examination:**
>
> Para 16(4) of DPCO reads as follows:-
>
> **"In case of decline in wholesale price index, there shall be a corresponding reduction in the maximum retail price and in case of scheduled formulations produced or available in the market before the date of notification of revised ceiling price, the manufacturers shall ensure within a period of forty-five days of the date of such notification that the maximum retail price (MRP) of such scheduled formulation does not exceed the revised ceiling price (plus local taxes as applicable) and information about the revision shall be sent to the Government in either electronic or physical form in Form-II within a period of fifteen days of such revision."**
>
> In the phrase, "**reduction in maximum retail price**", going by the definition of **maximum retail price (MRP)** given in para 2(r), it clearly means the **ceiling price** [or the **retail price** plus local taxes plus local taxes and duties, applicable, at which the drug shall be sold to the ultimate consumer and where such price is mentioned on the pack."].

Further, in this paragraph, the "**retail price**" is defined in para 2(z) as the price fixed by the Government for anew drug under para 5. As per Para 2(d) "**Ceiling Price**" means a price fixed by the Government for scheduled formulations in accordance with provisions of this Order.

Also Para 16(1) of DPCO says that "**the Government shall revise the ceiling prices of scheduled formulations as per the annual wholesale price index (WPI) for preceding calendar year on or before 1st April of every year and notify the same on the 1st day of April every year.**

The NPPP-2012, approved by the Cabinet, clearly stipulates in its para(x) that "in case of decline in the WPI, a corresponding reduction in the **ceiling price** shall be **obligatory**. The NPPA itself will also separately **notify the revised ceiling prices** as applicable as on 1st April each year and in case any company has not fixed the prices not consistent with the **revised ceiling price**, the NPPA will take appropriate action to have these revised."

It is evident from the foregoing read with definitions as stated above that it is the ceiling price that has to be changed in respect of a scheduled drug by NPPA, i.e. those manufacturers selling their products above ceiling price are required to bring the price to the new level of ceiling price fixed by NPPA in the light of new WPI.

Therefore, the companies already selling their scheduled formulations lower than the ceiling price may not be required to further lower the prices of their products by applicability of negative WPI as they are already well within the ceiling price fixed by NPPA in the light of new WPI. Therefore, NPPA has clearly erred in inclusion of Note(e) in the SO, dated 2.3.2016.

7. **Government Decision:**

The WPI impact, whether increase or decrease,

should be given effect to by NPPA by revising the ceiling prices of the scheduled formulations.

NPPA is therefore directed to revise the Ceiling Price of Schedule I medicines each year in accordance with the WPI revision. Individual companies/ brands/ medicines which are already having a MRP below or equal to such WPI adjusted Ceiling Price shall not be required to reduce the MRPs any further vis-a-vis the WPI.

NPPA's Note (e) of the SO No.644(E), dated 2.3.2016 be deleted from the S.O. No.644(E) dated 2.3.2016 with immediate effect.

Issued on this day, the 10th day of January, 2017."

8. It is at once clear from the above that the Government of India has accepted the interpretation canvassed by the petitioner, in entirety. NPPA had revised the ceiling prices as required under paragraph 16(1) of the DPCO as per the annual WPI. The revision in the ceiling prices require all manufacturers and dealers to ensure that prices charged by them for the scheduled formulations are below the said ceiling price. Clearly, all manufacturers and dealers who were prior to the issuance of the notification, charging prices for the scheduled formulations at a rate below the ceiling price were not required to carry out any further downward revision.

9. The order dated 10.01.2017, passed by the Government of India, accepts the said proposition. In this view, there can be no controversy that the said order is required to be applied from the date of the notification as it is based on the interpretation of the DPCO. Its operation cannot be confined to the period after 10.01.2017.

10. In this view, this Court considers it apposite to allow the present petition and direct that Note (e) be read as deleted with effect from the date of Notification and not merely from 10.01.2017.

11. It is seen that Note (b) to the Notification dated 29.03.2016 is also in similar terms as Note (e) to the Notification dated 02.03.2016. Therefore, the petitioner's challenge to Note (b) is required to be sustained. Note (b) is also deleted from the Notification dated 02.03.2016 and will be considered as inoperative.

12. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 13, 2022
'gsr'