

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

283

CWP-30085-2022

Date of Decision: 31.07.2023

DKT INDIA

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amit Jhanji, Sr. Advocate with
Mr. Abhinav Sood, Mr. Anmol Gupta &
Ms. Nikita Garg, Advocates for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the show cause notice dated 11.06.2021 (Annexure P-1) to the extent whereby the respondents have passed an interim order directing the petitioner to stop the sale, distribution and consumption of the drug in question immediately after receipt of the notice and to call back unsold stocks of the drug in question lying with the dealers to whom it was sold.

Learned Senior Counsel for the petitioner contends that the petitioner is a super stockiest of the medicine i.e. a-Kare Combipacks containing Mifepristone Tablets I.P. & Misoprostol Tablets manufactured by M/s Piramal Enterprises. A complaint was received by the respondents- Drugs Control Officer of the Department of Food and Drug Administration Kaithal, as per which the abovesaid Kit had been supplied to Dr. Gaurav Poonia at Kaithal from Jeypora, Koraput, Orissa by M/s Piramal Enterprises which were ordered on-line by the complainant as per the

directions of Civil Surgeon, Kaithal from the website <http://www.amazon.in>. The complainant has averred that the drug in question had been sold by M/s Piramal Enterprises, Santoshi Mata Mandir, Jeypora, Koraput, Orissa and which is marketed by M/s DKT Healthcare India Pvt. Ltd.

Counsel contends that it is not a case of the petitioner putting the drug for online sale or having received any consideration in respect thereof. The sale in question has been undertaken by the manufacturer M/s Piramal Enterprises itself. Hence, without determining any lapse/omission on the part of the petitioner, his licence to sell the abovesaid drug, which has been issued by the Competent Authority, could not have been ordered to be suspended and the petitioner could not have been directed to stop the sale, distribution and consumption of the drug in question.

He contends that he would be satisfied at this juncture in case the abovesaid order is set aside to the limited extent reproduced herein below:

"You are further directed to stop the sale, distribution and consumption of the drug in question immediately after receipt of this notice and call back unsold stocks of the drug lying with the dealers to whom you had sold it, under intimation to this office."

He further prays that liberty be granted to the petitioner to submit complete response to the impugned show cause notice and that a final reasoned and speaking order may be passed by the respondents on the aforesaid show cause notice after affording an opportunity of hearing to the petitioner, in accordance of provisions of Drugs and Cosmetics Act, 1940. He vehemently argued that the respondents have no power to issue any

such order/directions and that only the Competent Authority under the Drugs and Cosmetics Act, 1940 has the power to pass any such order/direction for suspension/revocation/ cancellation of a drug licence.

Counsel for the respondents has no objection in the Competent Authority examining the entire controversy after affording an opportunity of hearing to the respective parties. He further contends that till the final decision is taken thereupon, the aforesaid extracted operative part of the show cause notice shall not be given effect to.

Accordingly, the present writ petition is disposed of with the consent of the parties and without commenting any further on the merits of the case, with a direction that the petitioner shall submit its reply to the above show cause notice within a period of 4 weeks of the receipt of certified copy of this order. Thereafter, the respondent-Competent Authority shall pass a reasoned and speaking order on the same after granting an opportunity of hearing and preferably within a period of three months thereafter. Till such time that the above decision is not taken, the operative part of the show cause notice, as extracted above, shall not be given effect to.

Petition stands disposed of accordingly.

31.07.2023.

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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No