

06 **13.12.
2024**

Ct. No. 08

Ab

**MAT 1995 of 2024
IA No. CAN 1 of 2024**

**Pinaki Banerjee
Vs.
The Union of India and others.**

**Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey.**

... for the appellant.

**Mr. Arup Kumar Mukhopadhyay,
Mr. Abhijit Sarkar,
Mr. Raja Biswas.**

... for the respondent nos. 13 to 15.

It is a classical example of business rivalry between two competitors dealing in the same products. The licence was granted to the appellant for opening a Pradhan Mantri Bhartiya Janaushadhi Kendra under the Pradhan Mantri Bhartiya Janaushadhi Pariyojana. The private respondents applied for the same Kendra under the said Pariyojana, but an objection was raised when the competent authority decided to grant such permission. The objection relates to a distance to be adhered to between the two such Kendras and an enquiry was made by a Marketing Officer under the said Pariyojana and found the distance not having satisfied.

As indicated above, because of the business rivalry, the appellant approached the Writ Court assailing the decision of the authority in granting permission to the private respondents to open such Kendra within the same district. The Single Bench dismissed the said writ petition holding that the moment the distance norms are duly satisfied, there is no justification in the objection raised by the appellant.

The Counsel for the appellant, who, admittedly, did not appear before the Single Bench, raised a point

that under the guidelines for opening of a new Pradhan Mantri Bhartiya Janaushadhi Kendra, the distance of more than 1 kilometer to be maintained between the two Kendras. It is further submitted that the distance has to be ascertained on the basis of the population within the area and, therefore, the authority cannot grant permission to another Kendra by violating such norms. He vociferously submits that the Single Bench surreptitiously jumped to the conclusion that the distance between the two Kendras are 1.1 kilometers despite the fact that there was no documentary evidence produced before it and, therefore, a report must be called for by this Court from the competent authority in this regard.

The Counsel for the private respondents not only refuted the contention of the appellant on factual matrix but also on a proposition of law, more particularly, the interpretation of the aforesaid guidelines in contending that there was an enquiry held by a Marketing Officer and the distance map so prepared was duly approved by the appellant and such document was produced before the Single Bench and on the basis thereof, the Single Bench arrived at a conclusion that the distance between two Kendras are 1.1 kilometers. He further submits that the guidelines, which contained the distance norms to be adhered to, create embargo if the distance is less than 1 kilometer and not when it is 1 kilometer. He vehemently submits that the documents relied upon by the appellant before the Single Bench as well as before this Court on the distance between the two Kendras would reveal that the distance is 1 kilometer and, therefore, on the stand of the appellant itself, the objection raised for granting permission to the private respondents is unsustainable.

On the conspectus of the respective submissions and the grounds of challenge taken in the writ petition,

the only point required to be decided in the instant appeal whether the distance between two Kendras are strictly in terms of the guidelines issued in this regard. None of the Counsels for the parties have raised any objection on the applicability of the said guidelines; rather they relied thereupon and interpreted the same in their own manner. The object and purpose for establishing such Kendra under the said Pariyojana is laudable, as the Government after collecting empirical data of survey of the market found that the branded medicines are sold at significantly higher prices than the un-branded generic equivalents, though both are identical in therapeutic value.

Considering the economic disability prevalent in the country and to give sucker to such marginalized persons, reasonable price quality generic medicines were considered to be provided in the market. These Kendras were sanctioned to sale the moderate price generic medicines having same quality and therapeutic value and in order to avoid any congestion, a guideline was framed, which includes distance to be maintained between the two Kendras. The obvious reason is the accessibility of the beneficiary by such Kendras at a quite affordable distance and also to avoid any competition in reducing the price to corrode the market.

Para V(e) of the said guidelines postulates that the distance policy should be observed while approving the Kendra under the said Pariyojana in the following:

- “V(a)
- (e) The following distance policy shall be observed, while approving the new PMBJK. Hence, applicant is required to follow the mentioned distance policy while applying for the new PMBJK:
 - (i) Distance of minimum 01.00 km to be maintained between two Kendras while approving new Kendra in all Districts throughout the country.
 - (ii) No distance police restrictions shall be

observed in surrounding area up to 500 meters from District Government Hospitals and Private Hospitals having 100 and more beds or Hospitals attached or associated with Medical Colleges.

However, location and number of Kendras shall be determined by the PMBI after examining the scope of viability of locations after market survey.”

It is manifest from (i) of paragraph V(e) of the said guidelines that a distance of minimum 1 kilometer to be maintained between the two Kendras in all districts throughout the country. We do not find any reference of population norms to be adhered to as the language used therein is explicit and clear to the extent that a distance of minimum 1 kilometer should be adhered to by the authorities for granting permission to more than one Kendra. The expression “minimum 1 kilometer” has to be understood in the perspective of the object and purpose for framing such guidelines, which, by no stretch of imagination, would bring a notion of more than 1 kilometer.

The distance between the two Kendras in all the districts should be 1 kilometer and if it is found by the authorities that it falls short of the same; it would violate the distance norms. The survey conducted by the Marketing Officer, which is ratified and approved by the appellant, as relied upon by the private respondents before the Single Bench, is indicative of the fact that the distance between the two Kendras is 1.1 kilometers. If the appellant has approved and signed the document, he cannot resile at a subsequent stage. We, thus, do not find any infirmity in the decision of the Single Bench in arriving at the conclusion based upon the said document that the distance is 1.1 kilometers.

Apart from the same, the reliance is placed upon the documents produced by the appellant in support of his contention that the distance norms have been violated, would further reveal that the distance between

the Kendras where the appellant is running the shop and the proposed Kendra for which the licence is granted to the private respondents is 1 kilometer.

Going by the said document, admittedly, relied upon by the appellant in the writ petition and for the sake of argument is accepted that the distance is 1 kilometer yet the guidelines do not indicate that the two Kendras cannot be established at a distance of 1 kilometer.

What is *sine qua non* for adopting the distance norms is a minimum distance of 1 kilometer and, therefore, if the distance is 1 kilometer, it does not offend such distance policy norms.

From whatever angle we look at do not find any infirmity in the judgment of the Single Bench in dismissing the writ petition. The appeal sans merit. The same is hereby dismissed. Consequently, the connected application being CAN 1 of 2024 is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)

