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W.A.Nos.2807 to 2810, 2814 & 2818 of 2018 (6 cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.A.Nos.2807 to 2810, 2814 & 2818 of 2018
and**

C.M.P.Nos.23341, 23345, 23346, 23350, 23369 & 23435 of 2018

W.A.No.2807 of 2018

M/s.Practo Technologies Pvt.Ltd.,
Represented by its General Manager, RPS Green,
165/5, Krishna Raju Layout, JP Nagar,
4th Phase, Bengaluru - 560 076.

... Appellant

Vs.

1. The Tamil Nadu Chemists and Druggists Association,
Represented by its General Secretary,
Mr.K.K.Selvan.
2. The Union of India,
Through the Department of Health and Family Welfare,
Room No.348, A Wing,
Nirman Bhavan, New Delhi - 110 011.
3. The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai.
4. Central Drugs Standard,



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Control Organisation,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
FDA Bhavan, ITO, Kotla Road,
New Delhi - 110 002.

5. The Drugs Controller,
Drugs Control Department,
359, DMS Compound, Anna Salai,
Teynampet, Chennai - 600 006.
6. Netmeds Market Plact Ltd.,
Represented by Director M/s.M.Pradeep Dadha.
7. Digital Health Platforms,
Represented by President Dharmil Nirupam Sheth.
8. 91 Streets Media Technologies,
Represented by its Director Mr.Dharmil Sheth.
9. Medlife International Pvt.Ltd.,
Represented by I.Yateesh.
10. IMG Technologies Pvt.Ltd.,
Represented by its Authorised signatory,
Mr.Jatin Arora.
11. M/s.TNMEDS,
Represented by its Proprietor,
D.Sridharan.
12. The Tamil Nadu Marunthalunar Sangam,
Represented by its General Secretary,
Mr.J.Venkatasundaram.

13. Consumer Online Foundation,



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Represented through its Managing Trustee. ... Respondents

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Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No. 28716 of 2018 dated 17.12.2018.

For Appellant	: Mr.Arjun Suresh
For R1	: Mr.S.K.Chandrakumar
For R2 & R4	: Mr.N.Ramesh
For R3 & R5	: Mr.K.Tippu sulthan Government Advocate
For R6	: Mr.Vijay Narayan Senior Counsel for Mr.A.Ramesh Kumar
For R8	: Mr.Satish Parasaran Senior Counsel for Mr.Edward James
For R9	: Mr.Thriyambak Kannan
For R10	: Mr.M.S.Krishnan Senior Counsel for Mr.Ankur Khandelwal for M/s Kochhar and Co.
For R11	: Mr.Naveenkumar Murthi for Ms.S.Varsha
For R7, R12 & R13	: Not ready in notice

COMMON JUDGMENT



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(Common judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)
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The present intra-court appeals on hand have been instituted challenging the order dated 17.12.2018 passed in W.P.No.28176 of 2018.

2. The writ court found it becomes necessary for Central Government to notify the Rules at the earliest in the interest of the public and the online drug trade. Direction was issued to the Union of India, Department of Health and Family Welfare and Central Drug Standard, Control Organization, Directorate General of Health Services to notify the proposed Drugs and Cosmetics Amendment Rules, 2018 in the Gazette at the earliest. Thereafter, the stakeholders namely, persons doing trade in online pharmacy have to obtain respective licenses in the manner prescribed in the Rules to be notified. The draft rules framed by the Central Government is yet to be notified. Thus, the online traders are bound to not proceed with their business in online pharmacy. Since online trading of Drugs and Cosmetics was prohibited by the writ court, the present writ appeals came to be instituted.

3. Mr.N.Ramesh, the learned Central Government Standing



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Counsel would submit that the process of finalising the draft rules are in progress. The Government of India has taken a decision to frame new comprehensive policy covering all the issues raised between the traders and the public at large keeping the interest of public in mind. Since, the issues involved between the parties are complex in nature, it took some time for the Government of India to finalise the new policy proposed.

4. The respective learned Counsels appearing on behalf of the contesting respondents would state that no action has been taken by the Government of India for the past 8 years. Online sale of drugs are causing concern to the public at large and many unlicensed Druggists are selling drugs online in an unregulated manner, which is unsafe and may result in health hazards. There is no mechanism to regulate their trade. Therefore, long delay would result in health issues among the public at large.

5. Mr.Satish Parasaran, Mr.M.S.Krishnan and Mr.Vijay Narayan the respective learned Senior Counsels appearing on behalf of the



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appellants/Companies would submit that drugs through online mode are being sold only by the licensed Druggists and Chemists. Unlicensed Druggists and Chemists are not permitted to sell drugs through online. In other words, the drugs and cosmetics are routed through the licensed traders and in the event of any complaint, actions have to be initiated against the individual offenders by the competent Authority in the manner known to law. It is made clear that drugs and cosmetics sold online must be routed through licensed Druggists and Chemists and in the event of information or complaint regarding violations, actions are to be initiated.

6. Mr.N.Ramesh, learned Standing Counsel would submit that the High Court of Delhi *vide* its order dated 04.03.2024 passed in the matter of CM APPL.No.13527 of 2024 in W.P.(C) No.11711 of 2018 has stated that in pursuance to the last order dated 16.11.2023, the Joint Secretary, Ministry of Health and Family Welfare is personally present and prayed for four months further time for framing the policy for online sale of drugs as per the draft notification dated 28.08.2018.

7. Pursuant to the submission before the Delhi High Court by the Department of Health and Family Welfare, Union of India, the Delhi High Court passed the following order:

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"CM APPL.13527 of 2024 in W.P.(C) 11711 of 2018

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5. *In pursuance to the last order, the Joint Secretary, Ministry of Health and Family Welfare is personally present. He prays for four months further time for framing the policy for online sale of drugs as per the draft notification dated 28th August, 2018. In support of his prayer, he refers to para '8' of CM APPL.13527/2024, which reads as under:-*

"8.It is therefore respectfully submitted that the subject of online sale of drugs is one of complex nature and any modification in the manner of sale of drugs will have far reaching consequences and will involve changes in many other Acts and Rules/Regulations apart from Drugs & Cosmetics Act, 1940; Pharmacy Act, 1948; Pharmacy Practice Regulations, 2015; Indian Medical Act, 1956; Code of Ethics Regulations, 2002, and Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. It is further submitted that the modifications will also involve changes and amendments in these Acts and Rules/Regulations and the manner in which these Acts and Rules/Regulations are operated and enforced by all their respective stakeholders."

6. *In view of the aforesaid, the last and final opportunity is given to the Ministry of Health and Family Welfare to frame a policy of online sale of drugs within four months.*



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7. *It is made clear that if the draft policy is not prepared before the next date of hearing, this Court will have no other option but to proceed ahead with the matter.*

8. *Accordingly, the present application stands disposed of."*

8. Since the Delhi High Court seized of the matter and the Government of India is in the process of finalizing a new policy and to avoid inconsistency in dealing with the issues, which are all identical, we are inclined to dispose of the matter. More-so, the policy to be framed may have far reaching consequences and the Government of India has to consider various issues raised between the drug companies, stakeholders and public in general.

9. Accordingly, this Court passes the following order:

(i) The respondents 2 and 4 namely, the Union of India, Department of Health and Family Welfare, Nirman Bhavan, New Delhi and Central Drugs Standard Control Organisation, Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, New Delhi are directed to expedite and finalize the policy and notify the same as directed by



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the Delhi High Court in its order dated 04.03.2024.

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(ii) Till such time the policy is framed by the Government of India or the Delhi High Court finally dispose of the matter, the *status quo* prevailing as on today shall continue. However, subject to the condition that the online sale of drugs must be made only through or by the licensed Druggists and Chemists. In the event of any violation, the Authorities competent are bound to initiate appropriate action against the individual offenders in the manner known to law.

(iii) the first respondent is at liberty to workout their remedy in the manner known to law.

10. Accordingly, all the Writ Appeals stand **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.



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[S.M.S., J.] [C.K., J.]

25.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Tamil Nadu Chemists and Druggists Association,
Represented by its General Secretary,

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Mr.K.K.Selvan.

2. The Union of India,
Through the Department of Health and Family Welfare,
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Nirman Bhavan, New Delhi - 110 011.
3. The State of Tamil Nadu,
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Department of Health and Family Welfare,
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4. Central Drugs Standard,
Control Organisation,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
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New Delhi - 110 002.
5. The Drugs Controller,
Drugs Control Department,
359, DMS Compound, Anna Salai,
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AND
C.KUMARAPPAN, J.

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Common judgment in
W.A.Nos.2807 to 2810, 2814 & 2818 of 2018 (6 cases)

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