

12 **27.03.
2025**

Ct. No. 28

Ab

WPA 26167 of 2024

Dabur India Limited

Vs.

Union of India and others.

**Mr. Sourajit Dasgupta,
Mr. Sudhakar Prasad,
Mr. Utkarsh Mukherjee.**

... for the writ petitioner.

**Ms. Vineeta Mehria,
Mr. Amit Mehria,
Ms. Paramita Banerjee,
Mr. Rohan Raj,
Ms. Sonali Pal.**

... for the respondent nos. 2 & 3.

Today, when the matter is called on, Ms. Vineeta Mehria, learned Senior Advocate appearing on behalf of the respondent nos. 2 and 3, submits that the appeal that has been filed by the writ petitioner on September 19, 2024, has not been admitted by the respondents due to failure of the writ petitioner to furnish/submit the documents, which are necessary for filing the appeal. She further submits that on January 29, 2025, a recall order has been passed thereby recalling the entire batch of product of "Dabur Honey" manufactured in Batch No. NP5819 packed by the FBO on MFD: 13.02.2024 and Use By: 12.08.2025. A copy of such recall order was handed up in Court today.

Mr. Sourajit Dasgupta, learned Advocate appearing on behalf of the petitioner, submits that the respondents' submission that the appeal has not been admitted due to non-submission of necessary documents is without any basis. He takes the Court through page 61 of the writ petition to show that all the necessary documents were appended to the appeal. He further submits that the order of prohibition that has been impugned in the writ petition is in any event fit to be quashed on the ground of violation of principles of natural justice. To buttress

such submission, he relies on a decision of the High Court of Jammu & Kashmir in case of Bashir Ahmed Shergojri vs. U.T. J&K and others, reported at 2021 SCC OnLine J&K 836. He also submits that in similar circumstances the order of prohibition was quashed by the Jammu and Kashmir High Court. He further submits that the recall order that has been produced in Court today was never communicated to his client.

Upon having heard the learned Advocate for the parties and having perused the material on record, it appears to this Court that at this distance in time after about six months of filing of the writ petition passing of an order of stay of prohibition would not serve any purpose. The order of prohibition appearing at page 33 of the writ petition records that the same has been passed after assessing the risk consequential to a food hazard, adhering to general principle of risk management and to ensure safe and wholesome food. The concluding portion of the first page of the said order records that the order would take effect immediately and would remain in force "Until further orders in the matter". This observation suggests that the same is interim in nature.

The judgment passed by the High Court of Jammu & Kashmir relied on by the learned Advocate for the petitioner deals with a case where the writ petitioner before the said High Court had been directed to stop manufacturing of the subject food article. The order was more harsh in nature inasmuch as the entire business of the writ petitioner was brought to a screeching halt. In the case in hand, there is only one batch of Dabur Honey that has been prohibited for sale and the writ petitioner has suffered such prohibition for about six months by now.

The scales of the balance of convenience and inconvenience in the instant case do not appear to this Court to be tilting in favour of staying the operation of

prohibition at this stage. Such stay would permit the writ petitioner to put on sale the prohibited batch without assessing the damage that might be caused to public at large upon consumption of the prohibited batch. The risk factors are far higher than the loss that the writ petitioner may incur. Looking at it from another angle, granting stay would in a sense amount to granting final relief at the interim stage.

Furthermore, there is no recall order dated January 29, 2025 in place. The validity of the recall order is not up for being tested before the Court as of now. Therefore even if the order of prohibition is stayed, then also by the operation of the recall order, the writ petitioner would be at the same position. Therefore, here again, the Court would not be justified in passing an order, which will ultimately have no effect.

In such view of the matter, justice would be subserved if the respondents are directed to bring on record the communications relating to the admission of the appeal as well as the communication of the recall order to the writ petitioner by way of an affidavit within a week from date.

The writ petitioner would be entitled to revive its prayer for interim order after receiving the affidavit from the respondents.

Liberty to mention.

(Om Narayan Rai, J.)

