

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31..08..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.23580, 23581, 23582 of 2014
and W.P.Nos.32549 and 32551 of 2013

TTK Protective Devices Limited

represented by its Director Mr.R.Saranyan

No.6, Cathedral Road,

Chennai 600 086.

.. Petitioner in all WPs

Versus

1.Union of India

represented by the Secretary

Department of Pharmaceuticals

Ministry of Chemicals and Fertilizers

Government of India,

Room No.340-B, A-Wing, Shastri Bhavan

New Delhi 110 011.

.. 1st respondent in all Wps.

2.Secretary, Ministry of Health and Family Welfare

Government Of India,

Nirman Bhawan

New Delhi 110 108.

.. Respondent in WP.Nos.23580 to 23582 of 2014

3. National Pharmaceuticals Pricing Authority

represented by its Deputy Director

Department of Pharmaceuticals
 Ministry of Chemicals and Fertilizers
 Government Of India,
 3rd Floor, YMCA Cultural Centre Building
 1, Jai Singh Road, New Delhi 110 011.

..3rd Respondents all WPs

W.P.No.23580: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring entry 1 of S.O.1335 dated 01.06.1961 issued by the 2nd respondent, as ultra vires S.3(b)(ii) of the Drugs & Cosmetics Act, 1940, Art.14 & 19(1)(g) of the Constitution of India insofar as it applies to the Drug Price Control Order, 2013 r/w the Essential Commodities Act, 1955.

W.P. No.23581 of 2014: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring entry 1 of noti.no.X 11013/2/72-D dt. 09th July 1975 issued by the 2nd respondent, as ultra vires S.3(b)(ii) of the Drugs & Cosmetics Act, 1940, Art.14 & 19(1)(g) of the Constitution of India insofar as it applies to the Drug Price Control Order, 2013 r/w the Essential Commodities Act, 1955.

W.P.No.23582 of 2014: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring notification dt.10.07.2014 of the 3rd respondent as ultra vires paragraphs 2(1)(i), (o),(s) &(zb), paragraphs 4 & 9 of the Drug Price Control Order, 2013 and Article 14 & 19(1)(g) of the Constitution of India.

W.P.No.32549 of 2013: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring paragraph 4 of the Drug Price Control Order, 2013 being Ultra vires the provisions of

Sec.3 of the Essential Commodities Act, 1955, and of Article, 14 and 19 (1)(g) and other provisions of the Constitution of India.

W.P.No.32551 of 2013: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, declaring the order dated 05.11.2013 of the 2nd respondent as ultra vires the provisions of paragraphs 2(1)(i), (o),(s) &(zb) among others of the Drug Price Control Order, 2013 and Article 14 & 19(1)(g) of the Constitution of India.

For Petitioner :: Mr.Aravind P Dadar
Senior Counsel
for Mr.R.Raghavan

For Respondent :: Mr.G.Rajagopalan
Additional Solicitor General
assisted by Mr.B.Rabu Manohar
SCGPC

O R D E R

(Judgment of Court was made by The Honourable The Chief Justice)

These writ petitions were awaiting the Judgment of the Delhi High Court which has been delivered by the Division Bench of the Delhi High Court in *W.P.(C).No.7705 of 2013 and 2245 of 2014 dated 10.07.2015 (Reckitt Benckiser (India) Ltd., vs. Union of India)*. The operative portion of the Judgment reads as under:

“81. In the light of the legal position noticed above and for the reasons stated supra, we are of the view that the NPPA exceeded the powers conferred by Paras 4, 6 & 14 of DPCO-2013 while fixing the ceiling price for condoms. The language of Para 4 is unambiguous and makes clear the legislative intent that the ceiling price can be fixed only for scheduled formulations of specified strengths and dosages as specified under the First Schedule. Therefore, according to us, the provisions of Para 4 cannot be made applicable to „condoms" the dosage and strength of which have admittedly not been specified under the First Schedule.

82. It may be added that since condoms are formulations included in the First Schedule to DPCO-2013, it may be open to the respondents to regulate the same by invoking the other provisions of the DPCO-2013 which deal with the non-scheduled formulations, i.e. the formulations, the dosage and strength of which are not specified in the First Schedule. However, Paragraphs 4, 6 and 14 which exclusively deal with only those scheduled formulations of which strengths and dosages are specified in the First Schedule are not applicable. Consequently, the fixation of the ceiling price for condoms under Paragraphs 4, 6 and 14 of DPCO-2013 is impermissible under law.

83. In the light of the above conclusion, it is not necessary for us to consider the other contentions of the petitioners that the methodology prescribed in Para 4 of DPCO-2013 is unworkable in the case of condoms and that the advanced version of the pleasure condoms manufactured/ marketed by

the petitioners form a distinct and separate class from the basic/utility condoms and, therefore, fixation of a common ceiling price for both the categories under the impugned orders is violative of Article 14 of the Constitution of India.

84. Since the impugned action of fixation of ceiling price is held to be bad on the ground that the NPPA exceeded the powers conferred by Para 4, 6 and 14 of DPCO-2013 and the policy decision under NPPP-2012 has not been interfered by us in any manner, it is also not necessary for us to refer to the various decisions cited by the learned counsel for both the parties with regard to the scope of judicial review vis-à-vis policy decision.

85. Accordingly, we declare that the Orders of NPPA dated 05.11.2013 and 10.07.2014 are illegal and unsustainable. In the result, both the said Orders are hereby set aside.

86. It appears that after we reserved the judgment, the Government of India, Ministry of Chemicals and Fertilizers, by Notification dated 09.03.2015 made an amendment to the DPCO-2013 by substituting the Page 66 of 67 definition of „non-scheduled formulation" in Para 2(1)(v). The said fact was brought to our notice on 03.07.2015 by Shri Kirtiman Singh, the learned standing counsel for Union of India and a copy of the Notification dated 09.03.2015 has also been made available. As we could see, the Notification dated 09.03.2015 was published in the Gazette of India vide No. S.O.1221(E) dated 15.05.2015 and by virtue of the said amendment dated 09.03.2015, Para 2(1)(v) of DPCO-2013 reads as under:

"(v) non-scheduled formulation" means a formulation which

is not included in Schedule-I."

87. In view of the undisputed fact that the said amendment has come into operation from the date of publication, i.e. 15.05.2015, the same has no bearing for determining the validity of the Orders impugned in the writ petitions and, therefore, our conclusion in the writ petitions that the impugned Orders are liable to be set aside for the reasons stated supra needs no reconsideration.

88. The writ petitions are accordingly disposed of. There shall be no order as to costs. "

2. No Special Leave Petition has been preferred by the respondents nor by the private parties.

3. In view of the aforesaid, the present writ petitions are disposed of in terms of the aforesaid, leaving the parties to bear their own costs.

(S.K.K., CJ) (T.S.S.,J.)
31.08.2015

ksr

To

1.The Secretary, Union of India,
Department of Pharmaceuticals, Ministry of Chemicals and Fertilisers
Government of India, Room No.340-B, A-Wing, Shastri Bhavan
New Delhi 110 011.

2.The Secretary, Ministry of Health and Family Welfare
Government Of India, Nirman Bhawan, New Delhi 110 108.

3. The Deputy Director,
National Pharmaceuticals Pricing Authority
Department of Pharmaceuticals
Ministry of Chemicals and Fertilizers, Government Of India, 3rd Floor,
YMCA Cultural Centre Building, 1, Jai Singh Road, New Delhi 110 011.

The Hon'ble The Chief Justice
and

T.S.Sivagnanam, J.

(ksr)

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