

**THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)**

Dated: 9th September, 2019

SINGLE BENCH : THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P.(C) No. 06 of 2018

1. Sun Pharma Laboratories Ltd.,
Reg. Office: Sun House, Plot No. 201 B/1,
Western Express Highway,
Goregoan(E),
Mumbai – 400063.
Office at: Plot No. 754, Setipool,
Nandok Block, Ranipool,
East Sikkim- 737135.

..... Petitioner

versus

1. The Union of India,
Through the Ministry of Chemical and Fertilizer,
Dr. Rajindra Prasad Marg,
Shastri Bhawan,
New Delhi.
2. Ministry of Chemicals and Fertilizers,
Department of Pharmaceuticals,
Government of India,
Through its Joint Secertary,
Room No. 207 'D' Wing,
Shastri Bhawan,
New Delhi.
3. National Pharmaceutical Pricing Authority,
3rd/5th Floor,
YMCA Cultural Center Building,
1, Jai Singh Road,
New Delhi, India – 118601.

..... Respondents

Writ Petition under Article 226 of the Constitution of India, 1950.

Appearance:

Mr. Mr. Saurabh Kirpal and Ms Tanima Gaur, Advocates.

Mr. Narinder Ahuja, Authorised Representative, in-person.

Mr. Karma Thinlay, Central Government Counsel for Respondents No. 1, 2 and 3.

ORDER (Oral)

Bhaskar Raj Pradhan, J.

The present Writ Petition has been filed by the Petitioner seeking a writ for quashing the impugned Notification S.O. No. 1731(E) dated 10.07.2014 to the extent it fixes the Maximum Retail Price (MRP) for the formulation "Glimipiride-4mg" and the impugned notices dated 05.05.2016, 20.12.2016 and 22.06.2017 issued by the Respondent No.3.

2. It is the case of the Petitioner that a Show Cause Notice dated 20.12.2016 was issued by the Respondent No.3 requiring the Petitioner to show cause within 15(fifteen) days from the date of issue of the letter as to why action should not be taken to recover the overcharged amount of Rs.75,81,716/- (Rupees seventy-five lakhs, eighty-one thousand, seven hundred and sixteen) only, along with appropriate interest from the Petitioner. The Petitioner replied to the said Show Cause Notice with its communication dated 18.04.2017 by which they summarized certain factors for consideration i.e. statutory levies, trade margin and annual price increase of 10% as prescribed under the Drugs (Prices Control) Order, 2013. The Petitioner calculated the amount payable by them as Rs.43,71,306/- (Rupees forty-three lakhs, seventy-one thousand, three hundred and six) only, and also included a Demand Draft No.

542950 (ICICI Bank) dated 18.04.2017 for the said amount payable at Delhi.

3. The Demand Notice dated 22.06.2017, confirmed the fact that the Petitioner had paid the amount of Rs.43,71,306/- (Rupees forty-three lakhs, seventy-one thousand, three hundred and six) only, on 18.04.2017 and therefore, it calculated that the Petitioner was required to deposit an amount of Rs.41,79,635/- (Rupees forty-one lakhs, seventy-nine thousand, six hundred and thirty-five) only, towards balance overcharged amount in respect of Glypride 4 Tablets. It also demanded in addition, an interest of Rs.21,71,149/- (Rupees twenty-one lakhs, seventy-one thousand, one hundred and forty-nine) only, at 15% on the overcharged amount under Section 7A of the Essential Commodities Act, 1955, calculated up to 15.07.2017. Thus, the Respondent No.3 desired the Petitioner to deposit an amount of Rs.63,50,784/- (Rupees sixty-three lakhs, fifty thousand, seven hundred and eighty-four) only, towards the balance overcharged amount along with the interest calculated thereon by way of demand draft within 30(thirty) days from the date of issue of the letter. Aggrieved thereby, the Petitioner has approached this Court.

4. During the hearing, Mr. Karma Thinlay, learned counsel for the Respondent No.3, submitted that if the Petitioner were to approach them and make their representation on these aspects to

the demand, the Petitioner would be granted a fair hearing which would also help Respondents to come to a fair conclusion.

5. Mr. Saurabh Kirpal, learned counsel on behalf of the Petitioner submits that the suggestion falling from the learned counsel for the Respondent No.3 is a fair suggestion and, therefore, would do so if permitted.

6. In view of the submissions made by learned counsel for the respective parties, it is directed that the Petitioner shall approach the Respondent No.3 within a period of two weeks from today. The Respondent No.3, in turn, shall in compliance with the principles of natural justice, hear the Petitioner on all the grievances it seeks to make before the Respondent No.3 and, thereafter, the Respondent No.3 shall come to an independent conclusion uninfluenced by the earlier Demand Notice and pass a reasoned order.

7. The Writ Petition is disposed of in terms of the directions issued.

(Justice Bhaskar Raj Pradhan)
Judge
09.09.2019

Approved for reporting : ~~Yes~~ / No
Internet : Yes / ~~No~~

bp