

M/S Lupin Limited vs Union Of India And Ors on 23 September, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

\$~Writ - 1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1998/2020

M/S LUPIN LIMITED

Through :

Mr. Amit Sibal, Sr. Adv.

Sarin, Mr. Dibya Prashatn

Satish C. Kaushik, Adv.

versus

UNION OF INDIA AND ORS.

.....Respo

Through : Mr. Kirtiman Singh with Mr. Rohan An

Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 23.09.2020 [Court hearing convened via video-conferencing on account of COVID-19]

1. This is an application filed by the petitioner/review applicant seeking modification of paragraph 16 of the order dated 24.02.2020. Paragraph 16 of the said order reads as under:

"16. I may make it clear that challenge to the notification dated 10.07.2014 would not lie at the behest of the petitioner in view of the Bombay High Court judgment and given the fact that the petitioner was a party to those proceedings..."

2. It is not in dispute that the petitioner/review applicant was a part of the group of entities which challenged the notification dated 10.07.2014 before the High Court of Bombay [in short "Bombay High Court"] in the matter titled Indian Pharmaceutical Alliance and Anr. vs. Union of India & Ors., 2016 SCC OnLine Bom 11541.

2.1 A Division Bench of the Bombay High Court rendered its judgment in the aforementioned matter on 26.09.2016.

2.2 A perusal of the said judgement shows that fixation of Maximum Retail Price qua non-scheduled drug/formulation by the Government in exercise of powers under paragraph 19 of the Drugs (Price Control) Order, 2013 [hereinafter referred to as the "DPCO-2013"] was an aspect which was in issue before the Court. In this behalf, paragraph 11 of the aforesaid judgement is extracted hereafter.

"11. The arguments before us focus only on the understanding of the parties of para 19. For the purpose of this para, the guidelines have been issued and according to the petitioners, they guide the exercise of power in terms of para 19 of the DPCO-2013 so far as they empower fixing of price for non-scheduled formulation for a specific period. Para 2 of the guidelines is referred in para 8 of the writ petition and a copy of the entire guidelines is annexed as Annexure 'D'. The petitioners are, therefore, aggrieved and dissatisfied with the exercise of power by respondent nos. 1 to 3 under para 19 of this DPCO-2013. According to the petitioners, respondent no. 3 has issued 33 notifications/orders all dated 10th July, 2014 and has arbitrarily fixed Maximum Retail Price (MRP) including excise duty and local taxes for anti-diabetic and cardiovascular drugs falling under non-scheduled products. That is impugned."

2.3 As a matter of fact, one of the arguments which was advanced by the petitioners before the Bombay High Court, which included the petitioner/review applicant herein, was that the guidelines which had been issued for exercise of powers under paragraph 19 of the DPCO-2013 empowered the fixing of price for non-scheduled formulation/drug only for a specific period. In other words, it was not the contention of the petitioners before the Bombay High Court that the Government had no power under DPCO-2013 to fix the price of a non-scheduled drug/formulation.

2.4 Importantly, the Division Bench of the Bombay High Court, after considering various submissions, dismissed the writ petition; public interest being the main plank of the judgement.

2.5 The judgement dated 26.09.2016 was carried in an appeal to the Supreme Court. Admittedly, the Supreme Court also dismissed the Special Leave Petition.

3. It is, now, sought to be argued by Mr. Amit Sibal, learned senior counsel, who appears on behalf of the petitioner/review applicant, that paragraph 19 of the DPCO-2013 does not empower fixation of the ceiling price qua non-scheduled formulation/drug.

4. Even if I were to accept this submission, clearly, this ground was available to the petitioner/review applicant even before the Bombay High Court. As noticed hereinabove, the petitioner argued to the contrary i.e. that the price fixation concerning a non-scheduled formulation/drug in exercise of powers under paragraph 19 of the DPCO-2013 could be done only for a specific period.

5. To my mind, if nothing else, the principles of constructive res judicata would apply and, therefore, insofar as the petitioner/review applicant is concerned, it cannot take recourse to a ground [which it now seeks to put forth] by having paragraph 16 of the order dated 24.02.2020 modified/reviewed.

6. I must indicate that the captioned application and the plea raised therein is pivoted on a judgement of a coordinate bench of this Court rendered in Alembic Pharmaceuticals Limited vs. Union of India and Others, 2019 SCC OnLine Del 7040. This judgement was rendered on 08.02.2019.

6.1 The petitioner/review applicant, for whatever reason, did not place reliance on this judgement when the order dated 24.02.2020 was passed. 6.2 That being said, in my opinion, what comes in the way of the petitioner/review applicant is the fact that it took its chance before the Bombay High Court and failed. Therefore, it is now, not open to it to challenge the notification, albeit on a different ground, before this Court, in the instant writ petition.

7. I find no merit in the captioned application. The same is, accordingly, dismissed.

RAJIV SHAKDHER, J SEPTEMBER 23, 2020 pmc/KK [Click here to check corrigendum, if any](#)