Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

WP No. 1036-P/2017.

M/s Bloom Pharmaceutical (Pvt.) Ltd.

Vs

The State and others.

JUDGMENT

Date of hearing. 15.05.2017

Petitioner(s) by: Rana M.Maqsood Afzal Khan, advocate.

Respondent(s) by: Mr. Rab Nawaz Khan, AAG, alongwith
Imran Khan Burki, Provl.Drug Inspector,
Health Deptt: D.I.Khan.

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IJAZ ANWAR, J:- Through this writ petition, petitioner has challenged the minutes of 280th meeting of the Provincial Quality Control Board (PQCB), Khyber Pakhtunkhwa, Peshawar held on 31.12.2015, whereby the case has been sent for judicial trial to the Drug Court against the petitioner. The relevant para is reproduced:-

> *"All of the accused appeared and were heard in connection with their alleged involvement in sale of spurious & substandard injection Grecef 500mg IV/IM B.No.0247 Mfg: by M/s Bloom Pharma Hattar. The accused at S. No.1 declared that the said drugs were*

> *supplied by the manufacturer M/s Bloom Pharma and he has got business terms by showing bank transactions. He confessed that he issued warranty on the behalf of manufacturer due to the fact that stock was supplied to him by manufacturer. Now due to lack of invoice, the actual firm is taking advantage. It was shared with PQCB that the firm can be made accused in accordance to section 20,21 of the Drugs Act, 1976, if undertaking is obtained by the accused at S.No.1. After threadbare discussion the Board took the following decision.*
> ***Decision.*** *The Drug Inspector concerned to refer the case to the Drug Court for judicial trial also add the manufacturer as accused on the basis of under taking from the accused at S.No.1".*

2. The facts as alleged in the writ petition are that the petitioner has a valid license of manufacturing of medicines from Ministry of Health, Drug Regulatory Authority, Government of Pakistan. Initially he was served with a letter dated 13.1.2015, whereby it was alleged that during inspection of Zam Zam Pharma & Medical Store, D.I.Khan on 13.1.2015 by the Drug Inspector some samples of Injection Grecef 500mg IV/IM Batch 0247 manufactured by the petitioner were taken and sent to the Drug Testing Laboratory (DTL), the report whereof confirmed that the said

product is Spurious & Sub-standard. The petitioner submitted his reply dated 31.3.2015 and explained that since 2011, the petitioner had stopped the manufacturing of Grecef Injection 500mg and the name of the petitioner/company on the product is fake, despite the explanation, case against the petitioner was sent for judicial trial to the Drug Court. It has further been alleged that by doing so no right of hearing was provided to the petitioner; similarly, the decision so taken was in violation of Rule 3(3) of Khyber Pakhtunkhwa Drug Rules, 1982.

3. The respondents, on the other hand, contended that the owners of the medical stores were issued show-cause notices from where the Spurious & Sub-standard Grecef 500mg injection was recovered, they confirmed that the said injection was manufactured M/s Bloom Pharmaceuticals (Pvt.) Ltd. Industrial Estate, Hattar, District Haripur, therefore, the Provincial Quality Control Board (PQCB), Khyber Pakhtunkhwa constituted under Section 11 of the Drug Act, 1976 in its meeting held on 31.12.2015 sent the case for judicial trial to the Drug Court against the present petitioner, besides others.

4. Arguments heard and record perused.

5. It is noted that the Provincial Drug Inspector vide letter dated 26.3.2016, has sought explanation of the petitioner regarding the Injection Grecef 500mg allegedly manufactured by M/s Bloom Pharmaceuticals Pvt. Ltd. Industrial Estate, Hattar, which was subsequently found to be Spurious & Sub-standard as per the report of Drug Testing Laboratory (DTL). The petitioner had vide detailed reply dated 31.3.2015 submitted their explanation in the following words:-

> "(a) Allocation of Batch No. Serial and style for Grecef Inj does not match the specifications of Bloom Pharmaceuticals (Pvt) Ltd. The batch of Grecef Inj always starts with "GF" capital letter, but in above said substandard/spurious drug it starts with "O" capital letter.
>
> (b)Registration number of water for Inj, (Solvent) is not mentioned in above said product while registration No. of solvent is always mentioned at unit carton in our products, even it is evident and you can find registration No. of solvent on the pack of Ontriax 250mg Inj batch No.O-319 which was also sampled by you and is manufactured by us.
>
> (c)Water for Inj. Batch No.W-14001 is neither used and nor received in our premises.

> (d)Grecef Inj. 500mg B.No.GF-093 was the last batch which was manufactured in 2011 & expired in 2013".

6. We, while examining the minutes of 280th meeting found that before sending the case for trial against the other accused they were duly heard by the Provincial Quality Control Board (PQCB) and when their replies to the show-cause notices were found unsatisfactory, thereafter cases against them are sent for judicial trial to the Drug Court.

7. Under Section 11 (5)(b) of the Drug Act, 1976, the PQCB can recommends judicial trial against the accused on the complaint of Provincial Drug Inspector, however, under Section 3(3) of the NWFP Drug Rules, 1982, the PQCB is bound to provide opportunity of hearing to the accused before directing the Drug Inspector to prosecute the accused. Rule 3(3) of the NWFP Drug Rules, 1982 is reproduced:-

> *"The Board shall, examine carefully the case referred to it by any Inspector under the Act, and provide an opportunity of hearing to the accused to explain his position before directing the Inspector to prosecute the accused".*

8. We found that before sending the case for judicial trial against the petitioner/manufacturer, the provisions contained in Section 11(5) (b) of the Drug Act, 1976 and Rule 3(3) of the KPK Drug Rules, 1982 were never adhered to. It is by now well settled that any action adverse to the right or interest of a person can only be taken after providing meaningful hearing. The petitioner has thus genuine grievances that he has been condemned unheard. After the addition of 24-A in the General Clauses Act, it is the boundened duty and obligation of the public functionaries to pass impugned orders with full conscious application of mind and not in mechanical manner and to act justly, fairly and equitably without their being any element of discrimination.

9. In view of the above, we are having no other option but to allow the writ petition, set aside the decision of the Provincial Quality Control Board (PQCB) dated 31.12.2015 only to the extent of its direction of sending the case for judicial trial to the Drug Court against the petitioner and remand the matter back to the Provincial Quality Control Board with a direction to afford proper opportunity of hearing

to the petitioner and thereafter to proceed in accordance with the mandate given to (PQCB) under Section 11 of the Drug Act, 1976 read with Rule 3(3) of the KPK Drug Rules, 1982.

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Announced:
15.05.2017.