

THE HON'BLE SRI JUSTICE C. V. BHASKAR REDDY

WRIT PETITION No.25689 of 2024

ORDER:

This Writ Petition is filed seeking the following relief:-

“...to issue a writ, order or a direction particularly one in the nature of a Writ of Mandamus

(a) declaring the Impugned Order, dated 31/05/2024 passed by the Competition Commission of India (Respondent No.1) in Case No.6 of 2012 directing the Petitioner Company to furnish its audited financial statements for the Financial Years (FYs) 2021-22, 2022-23 and 2023-24 as being manifestly arbitrary, illegal, unconstitutional, in violation of the principles of natural justice and in violation of the mandatory procedure prescribed under the Competition Act, 2002 and Articles 14, 19 and 21 of the Constitution of India and setting it aside to the extent that it makes observations against the Petitioner Company;

(b) declaring investigation report, dated 03/04/2024 prepared by the Office of the Director General (Respondent Nos.2-4) as being manifestly arbitrary, illegal, unconstitutional, in violation of the principles of natural justice and in violation of the mandatory procedure prescribed under the Competition Act, 2002 and Articles 14, 19 and 21 of the Constitution of India and setting it aside to the extent that it makes observations against the Petitioner Company;

(c) declaring the initiation of proceedings against the Petitioner Company in Case No. 6 of 2012 pending before the Competition Commission of India (Respondent No.1) as being manifestly arbitrary, illegal, unconstitutional, in violation of the principles of natural justice and in violation of the mandatory procedure prescribed under the Competition Act, 2002 and Articles 14, 19 and 21 of the Constitution of India and consequently setting aside all proceedings against the Petitioner Company in Case No. 6 of 2012; and

(d) declaring the absence of a judicial member in the constitution of the Competition Commission of India as being ultra vires, arbitrary, unconstitutional and violative of the principles of natural justice and Articles 14 19 and 21 of the Constitution of India and consequently directing the Competition Commission of India not to proceed against the Petitioner Company in Case No.6 of 2012...”

2. It is stated that the petitioner is a company engaged in the business of providing Active Pharmaceutical Ingredients (API), generics, branded generics, biosimilars and over-the-counter pharmaceuticals products around the World. It is further stated that the petitioner company was a member of Indian Drug Manufacturers' Association (IDMA), which is the country's largest pharmaceutical industry association for bulk drugs. It is also stated that the petitioner company is also a member of the Indian Pharmaceutical Alliance (IPA), which is an organization of research based pharmaceutical associations in India. It is further stated that on 27.01.1997, the IDMA, Organisation of Pharmaceutical Producers of India (OPPI) and the All India Organisation of Chemists And Druggists (AIOCD) Association executed a Memorandum of Understanding with respect to various practices related to the sale and distribution of pharmaceutical products including expiry norms for medicine, distribution norms, product information service system, supply of products through authorised stockists and spurious drugs. It is further stated that the said memorandum was entered into between the parties much before the introduction of the Competition Act, 2002 (for short "the Act"). The case of the petitioner is that respondent No.6 claiming to be the President of All India Chemists and Distributors Federation, filed an information before

respondent No.2 under section 19 (1) (a) of the Act alleging that the AIOCD along with various other manufacturers of pharmaceutical products including the petitioner were acting in contravention of Sections 3 and 4 of the Act by engaging in restrictive trade practices. The said complaint was taken cognizance by the respondent No.1- Competition Commission of India (CCI) in Case No.6 of 2012. It is further case of the petitioner that the Competition Commission of India, after verification of the investigation reports filed by respondent No.2, *prima facie* found that 24 Opposite Parties contravened the provisions of Section 3 of the Act and are liable under Section 48 of the Act. The grievance of the petitioner is that even though there was no adverse report filed against the petitioner company by respondent No.2, the respondent No.1 has passed the impugned order dated 31.05.2024 against the petitioner i.e., Opposite Party No.12 for alleged violations of provisions of Section 3 of the Act.

3. Sri Avinash Desai, learned Senior Counsel representing Sri Kopal Sharraf, learned counsel for the petitioner vehemently contended that the respondent No.1 having observed that variation found against the petitioner in Case No.6 of 2012 is only to follow the anticompetitive provisions of demanding NOC for appointment of Stockist, ought not have passed the impugned order dated

31.05.2024 against the petitioner basing on the alleged investigation report, which action on the part of respondent No.1 is illegal and arbitrary and ultimately prayed this Court to allow the writ petition as prayed for.

4. Considered the submissions of learned counsel for the respective parties and perused the record.

5. In **Bharti Airtel Limited vs. Competition Commission of India**¹, the Hon'ble Supreme Court observed that where the Competition Commission of India (CCI) has initiated proceedings, and an investigation is ongoing, a writ petition may not be entertained. The parties should first exhaust the statutory remedy available under the Act. It was further held that CCI has the jurisdiction to entertain cases regarding anti-competitive practices, but an appeal can be made to COMPAT after the investigation is complete.

6. In **Cyrus Investments Pvt. Ltd. vs. Tata Sons Ltd**², the Bombay High Court held that unless there is a gross violation of fundamental rights, a writ petition challenging the notice issued by

¹ (2019) 2 SCC 521

² (2017 SCC OnLine Bom 9325)

the CCI should not be entertained, and the statutory remedy should be exhausted.

7. In **DLF Limited vs. Competition Commission of India & another**³, the Hon'ble Supreme Court reiterated that CCI orders can be challenged through a statutory appeal process and that writ jurisdiction should not be invoked when the alternative remedy is available.

8. In the instant case, basing on the investigation report dated 03.04.2024, respondent No.1-CCI passed the impugned order dated 31.05.2024 in Case No.6 of 2012, directing the petitioner to furnish its audited financial statements for the Financial Years 2021-22, 2022-23 and 2023-24. The petitioner has challenged the said order in the present writ petition without first availing the statutory remedy available under the Competition Act, 2002.

9. The aforesaid decisions clearly establish that where statutory remedies are available, a writ petition should not be entertained unless exceptional circumstances, such as a violation of natural justice or lack of jurisdiction, are demonstrated. The petitioner has not made a case for such exceptional grounds in this matter.

³ (2014) 8 SCC 129

10. In view of the above, the present writ petition filed by the petitioner is misconceived and liable to be dismissed.

11. Accordingly, the writ petition is dismissed. However, it is left open to the petitioner to avail the statutory remedies available under the Competition Act, 2002.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No costs.

Date: 19.09.2024
Gkv/scs

C.V. BHASKAR REDDY, J