

(2004) 01 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5819 and 9476 of 2001 and 10870 of 2002

A.P. State Bandage and Gaze (Mfg) Association

APPELLANT

Vs

Inspector General Drugs Control Administration and Another

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 3

Citation : (2004) 2 ALD 556

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : D. Sudershan Reddy, for the Appellant; Government Pleader for Industries, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—As the common issues arise for consideration in all these writ petitions, they are heard together and disposed of by this common order.

2. Writ Petition No. 5819 of 2001 is filed by the Andhra Pradesh State Bandage and Gaze (Mfg.) Association, represented by its Secretary, questioning the proceedings dated 17-1-2001 in Rc.No.1705/JD/Peshi/ 2001, issued by the Inspector General, Drugs Control Administration, informing the petitioner-Association that Bandage Cloth, Gauze Bandages or Roller Bandages are "drugs" within the meaning of Section 3(b) of Drugs and Cosmetics Act, 1940; as such, manufacture of said items without obtaining licence is violation of Section 18(c) of Drugs and Cosmetics Act, 1940.

3. Writ Petition No. 9476 of 2001 is also filed by the very same association, questioning the proceedings dated 17-1-2000 in Memo No. 29/2/2000/1485, issued by the Commissioner of Industries, Government of Andhra Pradesh, where instructions were issued to the General Manager, District Industries Centre, on the basis of the decision taken on 3-4-2001 to the effect that eligible small scale industrial units involving in manufacture of Gauze, Bandage and Rolled Bandage

clothes must obtain licence from the Director, Drug Control Administration, Andhra Pradesh, to provide linkage, for supply of the said items to the consumers.

4. Writ Petition No. 10870 of 2002 is filed by the 19 small scale industries, which are involved in manufacture of Bandage, Gauze, Cloth and Rolled Bandage, questioning the proceedings No. 29/2/01/1016/ 1016/F D-1, dated 15-5-2002, issued by the Commissioner of Industries, Government of Andhra Pradesh, black listing the petitioners-industries, by cancelling linkage to provide supply to Gauze, Bandage and Rolled Bandage cloths to the consumers.

5. It is the case of the petitioners that they have established small scale industrial units for the purpose of manufacture of Bandage Cloths, Gauze Bandages or Roller Bandages etc. It is their case that the products which they manufacture, namely, Bandage Cloth, Gauze Bandages or Roller Bandages are not "drugs" within the meaning of Section 3(b) of Drugs and Cosmetics Act, 1940. It is their further case that absorbent cotton wool, bandages, absorbent gauze and adhesive plaster are included in Schedule K as per Rule 123 of Drugs and Cosmetics Rules, 1945, exempting from the Chapter IV; as such, no licence is necessary to manufacture and sale of Bandage Cloth, Gauze Bandages or Roller Bandages etc.

6. On the other hand, it is the case of the respondents that Bandage Cloth, Gauze Bandages or Roller Bandages are the items come within the definition of "drugs", within the meaning of Section 3(b) of the Drugs and Cosmetics Act, 1940. It is the further case of the respondents that not only medicines, but all substances, devices intended to be used for internal or external in the diagnosis, treatment, mitigation or prevention of any disease or disorder, in human beings or animals, come within the meaning of "drug". It is submitted that once it is a "drug", there is prohibition u/s 18(c) of the Drugs and Cosmetics Act, 1940, to manufacture and sale of such items, except in accordance with the conditions of licence issued for such purpose. It is further submitted that the activities of manufacture and sale of absorbent cotton wool, bandages, absorbent gauze and adhesive plasters are not included in the Schedule-K as per Rule 123 of Drugs and Cosmetics Rules, 1945; as such, manufacturing units of said items are not exempted from the purview of Chapter-IV of Drugs and Cosmetics Act, 1940. It is also submitted that even for the class of drugs notified at Serial No. 13 of Schedule-K are only household remedies, which are exempted to the extent and subject to certain conditions, for the purpose of sales licence in Form 20-A; as such; the same cannot be made applicable to the petitioners, who are involving in manufacture and sale, for commercial activity.

7. Heard Sri D, Sudershan Reddy, learned Counsel for the petitioners and learned Government Pleader for Industries.

8. The first issue is: whether the definition of "drugs" as per Section 3(b) of Drugs and Cosmetics Act, 1940 includes absorbent cotton wool, bandages,

absorbent gauze, Gauze Bandages or Roller Bandages etc., is considered by the Apex Court in case of *Chimanlal Jagjivandas Sheth Vs. State of Maharashtra*. It is clearly held by the Supreme Court in the said case that the definition of "drugs" is comprehensive enough to take in not only medicines, but also substances intended to be used for or in the treatment of diseases of human beings or animals. While interpreting the words "substances intended to be used for or in the treatment," the Apex Court held that absorbent cotton wool, bandages, absorbent gauze, Gauze Bandages or Roller Bandages are substances within the meaning of said expression and are "drugs" within the meaning of Section 3(b) of Drugs and Cosmetics Act, 1940. In that view of the matter, the issue, is squarely covered by the judgment of the Apex Court, referred to above, against the petitioners.

9. The next issue is: whether the petitioners manufactures are exempted from the purview of Chapter-IV, which includes provision u/s 18(c) of Drugs and Cosmetics Act, 1940, prohibiting manufacture of certain drugs, except in accordance with the conditions of licence issued for such purpose, in view of the drugs notified in Schedule-K as per Rule 123 of Drugs and Cosmetics Rules, 1945. No doubt, certain class of drugs, to the extent and subject to the conditions specified in the schedule, are notified in Schedule K as per Rule 123 of Drugs and Cosmetics Rules, 1945, but, the manufacture of items, namely, absorbent cotton wool, bandages, absorbent gauze, Gauze Bandages or Roller Bandages etc., for sale are not included in the Schedule. In paragraph-13 of Schedule-K, certain drugs, inclusive of absorbent cotton wool, bandages, absorbent gauge and adhesive plaster are notified, but for limited purpose of household remedies, subject to certain extent for the purpose of sale licence in Form 20 A. The manufacture of these drugs for sale, by the petitioners manufacturing units is for commercial purpose; as such, they are not included in the Schedule-K. In any event, all the class of drugs notified in Paragraph 13 in Schedule-K is only to the extent of sale by licence in Form-20A; as such, the petitioners, who are involving in manufacture of absorbent cotton wool, bandages, absorbent gauze, Gauze Bandages or Roller Bandages etc., cannot claim any benefit for exemption from, Chapter IV, as they are involving in the activity of manufacture of drugs for commercial purpose. In that view of the matter, it is clear that the said products, which the petitioners are manufacturing are "drugs" within the meaning of Section 3(b) of the Drugs and Cosmetics Act, 1940, are prohibited from manufacture and sale, in the absence of licence from the competent authority, as per Section 18(c) of the Act. The activity of the petitioner, i.e., manufacture and sale of the said items, is outside the scope of class of drugs notified in Schedule-K as per Rule 123 of Drugs and Cosmetics Rules, 1945. In view of the same, it is not open for the petitioners to plead that no licence is necessary under the provisions of the Drugs and Cosmetics Act, 1940, for the purpose of manufacture and sale or for the purpose of seeking linkage for supply of the said items to the department of Industry. For the foregoing reasons, I do not find any merit in these writ petitions.

10. The writ petitions are accordingly