(2008) 11 AHC CK 0073

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 16212 of 2008

Brahmaji — APPELLANT

Vs

State of U.P.and others — RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 11 AHC CK 0073

Hon'ble Judges : Amar Saran, J and R.N.Misra, J

Final Decision : Disposed Of

Judgement

Amar Saran and R.N. Misra, JJ.—We have heard Shri D.R. Chaudhary, learned Government Advocate and perused the common affidavit filed on behalf of the Principal Secretary, Medical and Health, U.P., Drug Controller, U.P. and the Director General, Health Services, U.P. and the affidavit on behalf of the Director General of Police, U.P. dated 17.11.2008.

2. At the outset, we must express our utter disappointment with the two affidavits filed today.

3. Clear directions were given in our last order dated 14.10.2008. We find that either the directions have not been properly understood or not answered and not complied with. Thus, to our directions to the Drug Controller and the Director General, Health Services and the Director General of Police, U.P. to take stringent measures and to exhaust all available options in law to apprehend the nine persons, who were absconding in the spurious drug related offences, in which they were wanted. Instead of taking effective measures for compliance an approach of simply passing the buck to subordinate officials has been followed and the Assistant Drug Controllers/Senior Inspectors of Drugs, Meerut, Gorakhpur, Devi Patan and Kanpur divisions have been directed by the letter dated 7.11.2008 to contact the concerned police officials to apprehend the eight persons, who are still absconding. What steps these. Assistant Drug Controllers/ Senior Inspectors of Drug have taken in pursuance of this letter have not been

clarified.

4. In the affidavit filed on behalf of the Director General of Police, U.P. It has merely been mentioned that a Circular letter dated 6.11.2008 has been issued by the DGP wherein general directions have been given for arresting the eight accused persons without any delay, whose arrests were pending for a long time and merely a status report has been called for by 14.11.2008. The particulars of the measures taken for the arrest of the eight accused such as for initiation of proceedings under sections 82 and 83 of the Code of Criminal Procedure etc. have not been mentioned. We would like better particulars from both the police and health authorities about the concrete steps taken in respect of the aforementioned directions for arresting the absconding accused.

5. So far as the second direction for giving widespread publicity in the press in accordance with the Chief Secretary''s Circular dated 4.6.2007 with regard to four firms; viz. M/s. Saket Pharma (P) Ltd., Lucknow, M/s. Sweep Pharmaceuticals (P) Ltd., Lucknow, M/s. P.N. Drugs (P) Ltd., Muzaffarnagar and M/s. Krishna Pharmaceuticals (P) Ltd., Muzaffarnagar, whose licences were cancelled after their drugs were found spurious on the analyst report, the Drug Controller''s affidavit only annexes one news cutting dated 5.8.2007 in that "Dainik Jagran." This does not amount to any widespread publicity of the grave offence by these firms.

6. No time schedule has been mentioned by which time the remaining 12 vacant posts of Drug Inspectors will be filled up and we would like a more precise status report in this regard on the next date of listing.

7. So far as the fifth direction seeking the schedule and progress report about when and how the increase in staff, and setting up of the additional drug testing regional laboratories as mentioned in paragraph 6 of the Drug Controller''s earlier counter affidavit dated 13.10.2008 are concerned, only the minutes of a meeting dated 24.10.2008 have been alluded to which only mentions that some steps would be taken for filling up the posts of Food and Drug Administration Directorate with the finance department and that immediate steps would be taken by direct recruitment and promotion for filling up the vacant posts in the State Public Analysts Laboratories. Similar steps would be taken for filling up the vacant posts in the Food and Drug Departments. But no time schedule when such steps would be taken has been indicated which shows the complete lack of urgency on the part of the Government and these authorities for tackling this very serious issue of dealing with spurious, adulterated, substandard and misbranded drugs, which can result in playing havoc with the lives of unwary patients.

8. Annexure SA5, which deals with the raids and proceedings conducted between July, 2007 and June, 2008, merely mentions some round figures when the said raids were conducted. It is not clear when the 1629 raids were conducted in 71 districts in which only 28 out of the alleged 5465 samples collected, were found

spurious and 79 prosecution were launched. No details of the FIRs, crime numbers, police stations etc. have been mentioned. Better particular in this regard may be furnished on the next date of listing.

9. So far as the most important point No. 7 which contained a series of directions, in our order dated 14.10.2008 is concerned, which are being quoted hereunder, we see abject noncompliance:

"7. We suggest that a strategy be devised for serious and focussed intelligence gathering in such matters. Cells need to be created either at the CMO''s level or at the offices of the S.P. or C.O. or local drug inspector or other easily accessible places in each district where the aggrieved persons and care givers of patients may furnish information about suppliers of suspected fake drugs which the patients under their care may have been administered, or about which they have information, and the outlets from where the drugs were purchased. In case the complaint appears credible, there should be swift inspections of such outlets, and samples collected. The complainant may be informed in writing whether action shall be taken on his report or not. In case the local Inspector refuses to take action on his complaint, some procedure of approaching an appellate authority should be devised. The public should be informed about the assigned places where they can lodge their complaints by widespread publicity in the press, T.V. and radio. Information about the wholesale supplier and producer of the drug be obtained by interrogation of the person who has sold the suspected spurious drug. Giving of cash memos for sale of any drugs should be made mandatory as required under section 9(1) of the Drugs (Control) Act, 1950 for identifying the seller of the particular drug. The cash memo should mention the manufacturer''s name and batch number. Also a computerized system should be maintained showing the name and address of the manufacturer, the batch number, expiry date of the drug, name of the stockist and the eventual chemist/dispanser, so that information of the entire chain is immediately available. The samples collected should be got tested by the drugs laboratories in a prescribed time frame. In case the sample is found adulterated, then further indepth interrogation of the local dealer be done, for positively identifying the stockist or wholesale supplier and manufacturer of the drug against whom also stringent action must be taken, as we do not want the inspections and raids to be only a one time or sporadic affair. Our intention is to break the back bone of this nefarious trade by a focussed and targeted intervention in such matters. The dispensing dealer as well as the wholesale stockist should be arrested and effectively prosecuted and the trials be conducted expeditiously. Wide publicity in newspapers and other media be given of such manufacturers and sellers of counterfeit drugs for creating a fear psychosis and for deterring others from engaging in such practices. The public should also be asked to insist on taking duly filled cash memos etc. when purchasing medicines. Responses should also be sought from concerned consumer and other bodies, and the local units of the Indian Medical Association about any information that they may possess regarding the producers or distributors of such spurious, substandard or

misbranded drugs, as physicians are the best persons to conclude whether the drug administered is producing thedesired results, otherwise the drug could possibly be spurious or adulterated.

Another mode for gathering intelligence about spurious drugs would be random inspections. However, rather than blind random inspections and collection of sample from all units selling or manufacturing drugs, which is not humanly or operationally feasible, we think that the random inspections should first focus on unlicensed dealers and manufacturers of drugs, and known areas where such malpractices are extensively reported. We would like a progress report on the implementation of these directions on the next date of listing of this case."

10. We feel that the Drug Controller and other authorities have not even cared to read this significant paragraph and the details of the directions, which were contained thereunder. Only one letter dated 7.11.2008 appears to have been perfunctorily sent by the Drug Controller, U.P. to the C.M.Os. which simply mentions that the High Court has expressed a desire that there should be some place in the C.M.O./Drug Controller office for making complaints and that there phone numbers be given in the newspapers, but no compliance report has been called for from the C.M.Os. concerned in this regard. The other directions in the aforesaid paragraph have been completely ignored by the Drug Controller and D.G. Medical and Health Services.

11. No advertisements have been Issued in newspapers informing I patients and care givers to furnish informations about suppliers of suspected fake drugs where medicines administered to their patients were not having the desired effect. Nor has any procedure for swift inspections being prescribed where the information/ complaint about the spuriousness of the drugs appeared to be credible nor any procedure for informing the complainant whether action would be taken on his report or not and the devising of an appellate procedure in this connection.

12. It was also emphasized in the aforesaid direction No. 7 in the order dated 14.10.2008 that henceforth giving cash memos for sale of any drug would be made mandatory as provided under section 9(1) of the Drugs (Control) Act. 1950 and a computerized system as mentioned above in the above quoted directions would be put in place. The time frame would be fixed for testing the drugs collected and if the drug was found adulterated then the wholesalers and manufacture should be identified and stringent action be taken against him. The raids were not to be one time and sporadic affairs. The culprits were to be arrested and effectively prosecuted. Widespread publicity was to be given in the newspapers about such manufacturers of counterfeit drugs.

13. As the response of the respondents to this direction No. 7 and other directions has been completely inadequate and shows utter lack of application of mind and indifference, we are left with no option but to direct the Drug Controller and the Director General, Health Services to be present before this Court on the next date of listing to properly clarify these matters and to submit an explanation

to the Court as to what concrete steps have been taken for implementing this direction as well as the other directions issued by this Court.

14. So far as the directions 8 to 11 to the State Government to move applications for expediting the 79 spurious drug related cases pending in 33 districts before the CJ.Ms. and A.C.J.Ms. and for directing them to dispose of these cases within three months, if possible and also direct the C.J.Ms, and A.C.J.Ms. to give compliance report to the District Judges of the 33 districts and to point out''impediments in carrying out the directions, we have only received reports from the Registry that the said information relating to 79 cases, which were pending in 33 districts (mentioned in C.A.5 to the Drug Controller earlier affidavit), status reports have been received from the DistrictJudges of only 12 districts, but compliance report from 19 districts are still awaited. No information has been received from the A.C.J.Ms. and CJ.Ms. through the District Judges about the steps they are taking for expediting the disposal of the cases or the impediments that they and facing in implementation of these directions. We would like better particulars in this regard on the next date of listing. We would also like information from all the District Judges as to whether any other cases relating to spurious, substandard or misbranded drugs are pending in the aforesaid 33 districts as well the other districts, which have not been detailed in CA5 to the Drug Controller and Director General, Health Services'' counter affidavit dated 14.10.2008.

15. So far as the 12th directions in the previous order dated 14.10.2008 was concerned, which reads as follows:

"12. We would like to get better details on the next date of listing how the estimated value of such drugs in the market were given in the relevant column of the concerned Annexure C.A. 3 to the D.G.P''s. counter affidavit. We would also like an explanation from the Drug Controller and the D.G.P. as to why there was such unevenness in the conduct of raids in different districts, inasmuch as in some districts there were no raids, and in some districts there were such few raids even when the estimated value of the spurious/substandard drugs present in the market was so high, and what steps are proposed for addressing this situation in the future.

16. We find that this direction has also met with silence in the counter affidavit filed on behalf of the Drug Controller and Director General, Health Services. There is also no explanation of how the estimate of the value of the spurious drugs was arrived at by the I.O.s and inspecting officials in the affidavit on behalf of the D.G.P.

17. We would also like the explanation of the police and medical authorities on the next date as to how the estimated value of the said drugs have been given in the relevant column of the DGP''s counter affidavit and about the other points mentioned in direction No. 12.

18. We must again reiterate we are not at all satisfied by the indifferent, and

lackadaisical compliance with the tenor and spirit of the Court''s orders, especially when we are dealing with a matter for booking these merchants of death, who deal in spurious, substandard and misbranded drugs, playing with the lives of our poor helpless patients, and it appears to us that the authorities are complicit in this matter, and it amounts to a virtual noncompliance of the Court''s previous order.

19. It is being made clear that if this Court is not satisfied with, the explanation/ compliance in these matters by the Drug Controller and the Director General, Health Services, this Court will have no option but to ask the Principal Secretary (Medical Health) U.P. and the other apex authorities in the police department, to submit a personal affidavit and to be present in this Court on the subsequent date of listing to submit an explanation for the inadequate response and compliance of the Court''s orders.

20. As we had sought information from the Indian Medical Association and other consumer bodies about the producers or distributors of such spurious, substandard or misbranded drugs by the last order dated 14.10.2008, who have not responded as yet, we direct the Registry to forward this order as well as the order dated 14.10.2008 to the head office of the Indian Medical Association, for forwarding to their local units in various districts as well as the concerned consumer bodies for intervention in the matter before this Court. The registry is also directed to forward the previous order dated 14.10.2008 and the present order to the Organisation of Pharmaceutical Producers of India (O.P.P.I.), Peninsula Chambers, Ground Floor, Ganpatrao Kadam Marg, Lower Parel, Mumbai, 400013, email: indiaoppi@vsnl.com: Indian Drug Manufacturers Association (I.D.M.A.), 102B, Poonarn Chambers, AWing, Dr. A.B. Road, Worli Mumbai400088, Fax No. 91224950723, which an online search on the internet show to be bodies concerned with regulating the quality of drugs and checking spurious drugs. The Court would appreciate a response and intervention by these bodies, and their units in U.P. (if any), and from other bodies which may be concerned about this issue of marketing and supply of spurious, substandard and misbranded drugs.

21. We also direct that a copy of the order dated 14.10.2008 and the instant order be sent to the Chief Secretary, U.P., who may consider calling a joint meeting of the concerned Food and Drug and Medical Health departments and the Police authorities for evolving a coordinated common strategy for putting a check on the menace of spurious drugs. Let a status report on this direction be also submitted on the next date of listing.

22. List this case on 6.1.2009 for further orders and submission of compliance report by the aforesaid parties. On that date the Drug Controller and the Director General, Health Services shall appear, before this Court.

