(1984) 12 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Appeal No. 820 of 1981

Cyanamib India Limited and Another — APPELLANT

Vs

R.N. Was and Others — RESPONDENT

Date of Decision : 17-12-1984

Acts Referred:

Citation : AIR 1985 Delhi 179 : (1985) ILR Delhi 704

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : A.B. Divan, S.T. Thakore, D.D. Desai, Ravnder Narain, S.H. Merchant, T.M. Ansari, P.K. Ram, Lira Goswami, T.S.K. Iyer and P.P. Khurana, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this and the connected writ petitions is to the fixation of maximum sale price of the bulk drugs and of the retail prices of formulation, which prices of the have been fixed from time to time, under the provisions of the Drugs Prices (Display and Control.) Order, 1979 (hereinafter referred to as Dpco of 1979").

(2) Though a number of writ petitions were heard together, the main arguments were addressed by the counsel in Civil Writ No .820 of 1981 (Cyanamid India Limited Vs. Sh. R.N.Das),hereinafter referred to as ''the petitioners''. The contentions raised are common to all the other writ petitions except that in some cases additional points have been taken which will be dealt with separately .It is, Therefore, necessary to set-out the relevant facts in Cyanamid''s case in some detail.

(3) Before 1962 there was no statutory control on the prices of drugs. For the first time control was brought about when drugs (Control of Prices) Order, 1963 was promulgated, under the defense of India. Act, whereby orders were issued freezing the prices of drug''s as from 1/04/1962. Thereafter Tariff Commission

was appointed to go into the cost structure of 17bulk drugs, 34 single drug formulations and 15 multiple drug formulations .The Tariff Commission submitted its report in1968, inter alia, recommending 15 per cent pre-tax return on capital employed for bulk drugs. For formulations it recommended ex-factory cost plus 15 per cent selling expenses plus 15 percent mark up of total cost of sales.

(4) On 16/05/1970, in exercise of the powers conferred by section 3 of the Essential Commodes Act, 1955, the Central Government issued the Drugs (Prices Control) Order,1970. Under this Order, prices of essential bulk drugs were fixed by the Government under clause 4(1), which was as follows :

"4.Power to fix the maximum sale price of an essential bulk drug. (1) The Central Government may, with a view to regulating equitable distribution of essential bulk drug and making the same available at a fair price, from time to time fix, by notification in the Official Gazette, the maximum price at which the said essential bulk drug shall be sold: Provided that before fixing the maximum price in respect of an essential hulk drug, it shall be the duty of the Central Government Institute such inquiry as it deems fit for the purpose. Provided further that, as regards the fixation of the maximum price of the essential bulk drugs included in Schedule I at the commencement of this Order, the recommendations made in this behalf by the Tariff Commission in its Report of August, 1968shall form the basis and no such inquiry as aforesaid shall be necessary.

The said Order of 1970, inter alia, also provided for a formula for calculating the retail prices of formulations. The said Order also envisaged that instead of fixing the retail prices of the formulations in terms of the said formula the Central Government could approve a scheme of prices covering all or the formulations marketed by the manufacturers so that the overall gross profit before tax does not exceed 15 per cent of the sales turn over. This was provided by clause 14 of the: said Order. Under the said Order prices of the bulk drugs were fixed under clause 4 whereas prices of formulations were fixed either according to the formula or according to clause 14, which provided for the aforesaid alternative scheme of prices. As regards the petitioners, they opted for the scheme of package of prices under clause 14 of the D.P.C.O. of 1970, which scheme was approved by the Central Government.

(5) The question of fixation of prices of drugs appears to have been receiving the attention of the Government from time to time. In 1974 it appointed a Committee under the Chairmanship of Shri Jaisukh lal Hathi, commonly known as the Hath Committee ,to enquire into the various aspects of the drug industry, It submitted its report in April, 1975 known as the Hathi Committee Report. The said report Was considered by the Central Government and, on 29/03/1978, Shri H.N.Bahuguna, the then Minister of Petroleum, Chemicals and Fertilizers ,announced the new drug policy of the Government, which contained the Government''s decision on the recommendations of the Hathi Committee. The broad objectives of the said policy were, inter alia, to develop self-reliance in drug technology; to provide for leadership role to public sector; to try and reduce

the quantum of imports and to foster and encourage the growth of Indian Sector; to ensure that the drugs are available in abundance at reasonable prices; to keep a careful watch on the quality of production and to prevent adulteration and mal-practices; to offer special incentives to firms which were engaged in research and development; and to provide other parameters to control, regulate and rejuvenate the industry. asa whole keeping in view the national objectives and priorities. The said policy also contained the decision of the Central Government that all bulk drugs which were used in production of price control formulations would be subject to price control. It was further provided that the post tax return on bulk drugs required for production of category I and Ii formulations, which were highly essential and life saving will be kept on 14 per cent arid on the other bulk drugs at 12 per cent on net worth -i.e. equity plus free reserves.

(6) On 31/03/1979 the Dpco of 1979 was issued u/s 3 of the Essential Commodities Act, 1955, this was in supersession of Dpco of 1970. Before dealing with the relevant provisions of the said Dpco in some detail, at this stage it may only be noted that the said Dpco provided for fixation of maximum price for sale of the bulk drugs, the retail prices of formulations and it also provided for leader prices to be fixed. The bulk drug prices which were prevailing prior to the promulgation of the said Order were statutorily continued till they were refixed under this DPCO. ;

(7) By an order dated 3/04/1979 issued under clause12(1) of Dpco of 1979, the Central Government fixed leader prices of several formulations. These prices were the same as the prices which were prevalent under the Dpco of 1970.

(8) On 14/09/1979 the petitioners wrote to the Government asking for upward revision of one of the basic bulk drugs manufactured by it, namely, Tetracycline clause The petitioners then received from the Bureau of Industrial Costs and Prices (hereinafter referred to as "BICP") a letter asking that cost data of the notified bulk drugs should be submitted to it by the petitioners. In respect of Tetracycline the petitioners furnished the necessary cost data on 12/10/1979. The BICP then, on 30/09/1980, required that cost data under Dpco of 1979 for significant purchases made up to August,1980 for major inputs for manufacture of bulk drugs should be supplied to it. The said requisite information was supplied by the petitioners on 14/10/1980 for three bulk drugs, namely .Tetracycline Hcl, Chloro-Tetracycline and De-Methyl-Chloro-Tetracyline. Vide its letter dated 8/01/1981 the BICP asked for data for energy cost escalations to be submitted to it before 31/01/1981. The same was submitted by the petitioners on 29/01/1981.

(9) While the aforesaid data was being collected by Bicp, Central Government, on 28/01/1981, passed Bulk Drug Order under clause 3 of Dpco of 1979 fixing the prices of six of the bulk drugs which were manufactured hy the petitioners. The prices so fixed were less than the prices which the petitioners had wanted the Government to fix. Aggrieved by the aforesaid fixation of prices, on 2/03/1981

the petitioners filed an application for review before the respondents requesting that the prices which had been fixed by the aforesaid order dated 28/01/1981 should be revised. The petitioners also asked the respondents to disclose the basis and the criteria on which the prices had been fixed under the impugned Bulk Drug Order.

(10) The Government, under clause 12(2) of the Dpco of1979, vide order dated 12/03/1981, fixed prices of 15formulatic . As the petitioners were not satisfied with the prices which v so fixed, they sent another letter dated 27/03/1981 in furtherance of the review application dated 23-1981requesting for upward revision of the said prices, It was also contended in the said letter that it was fair and reasonable that the petitioners should be given an opportunity of being heard and they should be told the basis and the criteria which is adopted by the Government in determining the prices. It was submitted that the said basis and criteria should be provided to the petitioners so that they have reasonable opportunity of justifying their costs. It may here be noted that a formal review application against the Order dated 12/03/1981 was filed by the petitioners on 13/04/1981.

(11) On 1/04/1981 the Government issued an order under clause 7(1) of the Dpco of 1979. By virtue of this Order,retention price for Tetracycline Hcl was fixed at. Rs. 729.68 per Kg. for 4 different manufacturers of the said drug and the bulk price for the same was also fixed at the same figure of Rs. 729.68 per Kg. Retention and pool price in respect of another bulk drug, namely Tetracycline Base, was also fixed by the said Notification at Rs. 675- per Kg.

(12) On 3/04/1981 the Government fixed prices of four more formulations under clause 15(b) of the Dpco of1979. By another review application dated 13/04/1981 the petitioners applied for review not only of Order dated 1 2/03/1981 but also of the aforesaid Order dated 3/04/1981.

(13) On 19/04/1981 the present writ petition was filed by the petitioners challenging the aforesaid orders issued by the Government fixing the maximum sale price of six bulk drugs as well as retail prices of formulations which had been determined by the Government. On 20/04/1981 notice was issued to the respondents and ex parte interim order was passed to the following effect:

"In the meanwhile, on the petitioner''s giving an undertaking to maintain prices both for bulk and formulation, as were prevailing prior to the impugned notification ,we stay implementation of the impugned bulk prices as well as formulation prices."

On 21/07/1981 rule was issued and the interim arrangement, pending disposal of the writ petition, was recorded vide order dated 25/11/1981. The relevant portion of the same is as under:

"After hearing learned counsel and with their consent,an arrangement has been worked out as an interim measure .We. Therefore, confirm till further orders the

interim order made by us on 20/04/1981.The terms of the said order i.e. on the undertaking given on behalf of the petitioners to maintain statuesque on the prices prevailing prior to the issue of the impugned notifications, the petitioners through their counsel further give an undertaking to this Court that ,in case the petition is dismissed and the rules discharged the petitioners shall within eight weeks of the? dismissal of the petition by this Court deposit in this Court the difference in the prices of the formulations in question for being ultimately deposited in the Drugs Prices Equalisation Account. The petitioners through their counsel further give an undertaking that in this Court the petitioners would not contend or challenge the said amount, if deposited, is not liable to be deposited under any law whatsoever. It is made clear that the undertaking is without prejudice to the petitioner''s right to take appropriate directions from the Supreme Court ,if so advised in this regard."

(14) During the pendency of the writ petition, revised bulk Drug Order was issued under clause 7(1) of the Dpco of1979 on 8/07/1982 superseding earlier Order dated 1/04/1981. As a result of this. fresh retention prices and pool prices were fixed in respect of two bulk drugs. By another Order dated 13/07/1982, issued under clause 3(1) of the DPCO of 1979, the earlier Bulk Drug Order dated 28/01/1981 was superseded and prices of four bulk drugs were revised upwards. Even the revised prices were not as much as were being claimed by the petitioners. This was followed by another Order dated 6/08/1982, issued by the Government under clause 12(2) of the Dpco of 1979, in supersession of the earlier Order dated 12/03/1981, and prices of 14formulations were revised. In respect of eight formulations the prices were increased, prices of 5 formulations remained the same and the price of one formulation was decreased.

(15) The aforesaid revised Bulk Drug Order dated 8/07/1982 was challenged by the petitioners by their filing a review application on 16/09/1982. On that day another review application was also filed challenging the Order dated 1 3/07/1982. The Order dated 16/09/1982, where by prices of some formulations were revised, was also challenged by another review application also dated 16/09/1982. The petitioners then sought to challenge the aforcsaid Orders revising the bulk drug prices and the formulation prices by moving an application ,C.M. No. 2363 of 1983, for permission to amend the writ petition. Before this application could be allowed, a meeting was held on 7/01/1983 between the Secretary, Ministry of Chemicals & Fertilizers and the representatives of the petitioners as well as of the BICP. The minutes of the meeting show that no final decision was taken on the review applications which had been filed by the petitioners. One thing, however, which was decided was that BICP would invite the representatives of the petitioners and would give them a hearing and would look into their various claims.

(16) The Government thereafter issued Orders dated 2 9/08/1983, 3/09/1983 and 29/09/1983revising the prices of various formulations. On 30/11/1983 the petitioners moved a second application for amendment of the writ petition. By

order dated 5/01/1984 the amendment of the writ petition was allowed and the petitioners were permitted to challenge the various Orders which had been issued after the filing of the writ petition.

(17) The challenge in the writ petition filed by M/s. Cyanamid India is to the price fixation of the following six bulk drugs and the formulations made there from :

1.Tetracycline Hcl (Parenteral) (PTC)

2.Demethylchlortetracyline Base (Neutral), (DMCTC-Base) (Discontinued from Nov. 1981)

3.Demethylchlortetracyline Hcl (DMCTC-HCI.)

4.Chlor tetracycline Hcl (CTC-HCL)

5.Tetracyline Base (Neutral) (PTN), (Discontinued from March, 1982).

6.Tetracycline Hcl (TC-HCL)

Items 1 to 4 are solely manufactured and captivity consumed by the petitioners. Items 5 and 6 are also manufactured by others. In order to appreciate the rival contentions, it is necessary to refer to the relevant provisions of the Dpco of 1979 in some detail.

(18) Under paragraph No. 3 of the said Order, power is given to fix the maximum sale price of indigenous!" manufactured bulk drugs specified in First Schedule or Second Schedule. The said paragraph reads as under : "3. Power to fix the maximum sale price of indigenously manufactured bulk drugs specified in First Schedule or Second Schedule.

(1)The Government may, with a view to regulating the equitable distribution of an indigenously manufactured bulk d

(2)While fixing the price of a bulk drug under subparagraph (1). the Government may fake into account the average cost of production of such bulk drug manufactured by an efficient manufacturer and allow a reasonable return on worth. Explanation -In this sub-paragraph, the expression "efficient manufacturer" means a manufacturer : -(i) whose production of such bulk drug in relation to the total production of such bulk drug in the country is large, or(ii) who employees efficient technology in the production of such bulk drug.

(3)No person shall sell a bulk drug at a price exceeding the price notified under sub-paragraph (1), plus local taxes, if any, payable :"Provided that until the price of a bulk drug is so notified, the price of such bulk drug shall be. the price which prevailed immediately before the commencement of this Order and the manufacturer of such bulk drug shall not sell such bulk drug at a price exceeding the price which prevailed as aforesaid.

(4)(a) ere (after the commencement of this Order) any manufacturer commences production of a bulk drug specified in the First Schedule or the

Second Schedule, the price of which has already been notified by the Government ,ho may sell the bulk drug at a price not exceeding the price so notified.(b) Where the price of a bu''ik drug has been malafied by the Government. the manufacturer shall, within fourteen days of the of. commencement of the production of such bulk drug make an application to the Government in Foem1 I and intimate Government the price at which h" intends to sell the bulk drug and the Government may, after making such inquiry as it does not fit by orders, fix a provisional price at which sick bulk drug shall be sold. shall ,within six months of the commencement of such production, make 3 further application the Government in Form I and the Government may ,after making such inquiry as it deem-; fit, by notification in the Official Gazette fix the price of such bulk drug.

Sub-para (2) of paragraph No. 3 refers to reasonable return being allowed on net-worth. The expression on "net-worth" has been defined in para 2(m) to mean "the share capital of a company plus free reserve, if any" In turn, para 2(g) defines? free reserve" to mean "a reserve created by appropriation of profits ,but does not include reserves provided for contingent liability ,disputed claims, goodwill, revaluation and other similar reserves". Paragraph 4 gives the power to the Central Government to fix retention price and the common sale price. A provision similar to this did not exist in the Dpco of 1970.The said para 4 reads as under :

"4.Power to fix retention price and common sale price: Notwithstanding anything contained in paragraph S, Government may, if it considers necessary or expedient so to do for increasing the production of an indigenously manufactured bulk drug specified in the First Schedule or the Second Schedule ,by order published in the Official Gazette ,fix: (a) a retention price of such bulk drugs ;(b) a common sale price for such bulk drug, taking into account the weighted average of the retention price fixed under clause (a).Provided that the Government may, having regard to the following factors, namely: (a) the production and requirement of such drug in the country;(b) the need to afford protection to the production of such bulk drug by the individual manufacturer ; (c) the planned growth of such drug and the Government Policy in force from time to time; by order, published in the Official Gazette, fix the retention price as the common sale price, that is to say the sale price, in respect of such bulk drug manufactured by such manufacturer, as may be specified in the said Order."

Paragraph 5 requires every manufacturer of a new bulk drug to make an application to the Government within fourteen days of the commencement of production of the new bulk drug. The Government is then given the power to decide whether to include such bulk drug in the Dpco of 1979 and to fix a provisional price thereof. After the provisional price is fixed, the maximum selling price is notified by the Government, after it has made such inquiries as it deems fit. Sub-para (2)(c) of paragraph 5 states that the price so fixed "shall be the maximum selling price of such new bulk drug and no person (including a person

manufacturing such bulk drug thereafter) shall sell such new bulk drug at a price exceeding the price so notified? Under paragraph 6, power is given to fix the maximum sale price of imported bulk drug while paragraph 7 give a the power to fix retention price and pooled price for the sale of bulk dings specified in the First and the Second Schedule which are indigenously manufactured as well as imported. Paragraph 8gives an incentive to the produce''s of bulk drugs through original research and development. The said para provides that a bulk drug so produced, through original research and development in the country and which js not produced elsewhere ,shall be exempt from the provisions of the Order for a period of five years from the date of commencement of the production of such new bulk drug. Paragraph 9 gives the power to the Government to direct any manufacture of bulk drugs to sell such bulk drugs to such manufacturers of formulations, and in such quantities, as may be specified in general or special orders to be passed by the Government.

(19) The D.P.C.O. also postulates- the fixing of retail prices of formulations. Paragraph 10 sets out the formula for the calculation of the retail price of formulations .The said paragraph reads as follows :

"10.Calculation of retail price of formulations-- The retail price of a formulation shall be calculated in accordance with the following formula, namely : - R.P.=(M.C. + C.C. + P.M. + P.C.) X 1 + Mu + E.D. 100)Where ''R.P.'' means retail price."M.C." means material cost and includes the cost of drugs and other pharmaceutical aids used including averages, if any, and process loss thereon in accordance with such norms as may he specified by the Government from time to time by notification in the Official Gazette in this behalf."C.C." means conversion cost worked out in accordance with such norms as may be specified by the Government from time to time by notification in the Official Gazette in this behalf."P.M." means the cost of packing material including process loss thereon worked out in accordance with such norms as may be specified by the Government from time to time by notification in the Official Gazette in this behalf."P.C." means packing charges worked out in accordance with such norms as may be specified by the Government from time to time by notification in the Official Gazette in this behalf."M.U." means mark-up referred to in paragraph 11."E.D." means excise duty: Provided that in the case of an imported formulation the landed cost shall form the basis for fixing its price along with such margin as the Government, may allow from time to time:Provided further that where an imported formulation is repacked, its landed cost plus the cost of packing materials and packing charges as worked out in accordance with such norms as may be specified by the Government from time to time by notification in the Official Gazette, shall form the basis for fixing its price. Explanation .For the purposes of this paragraph." landed cost" shall mean the cost of import of drug inclusive of customs duty and clearing charges "

According to paragraph 11 the mark-up referred to in paragraph 10 hereinabove, is to include distribution cost, outward freight, promotional expenses,

manufacturer''s margin and the trade commission and is not to exceed forty per cent in the case of formulations specified in Category I of the Third Schedule; fifty-five per cent in the case of formulations specified in Category Ii of the said Schedule; one hundred per cent in the case of formulation specified in Category Iii of the said Schedule .Paragraph 12 enables the Government to fix leader prices of formulations specified in Categories I and Ii of the third Schedule. Paragraph 13 gives the power to the Government to fix retail prices of formulations specified in Category III of the Third Schedule. The said paragraph reads as under :-

"13.Power of Government to fix retail price of formulation specified in Category Iii of the Third Schedule. (1) The Government may, from time to time, by order ,fix the retail price of a formulation specified in Category Iii of the Third Schedule in accordance with the provisions of paragraphs 10and 11.(2) Where the Government fixes or revises the price of any bulk drug under the provisions of this order and a manufacturer utilises such bulk drug in his formulations specified in Category Iii of the Third Schedule he shall, within thirty days of such fixation or revision, make an application to the Government in Form 3 or Form 4, as the case may be, and Government may, if it considers necessary, fix or revise, the price, of suchformulation.(3) The retail price of a formulation once fixed by the Government under sub-paragraph (1) shall not be increased by any manufacturer except with the prior approval of the Government.(4) Any manufacturer, who desires revision of the retail price of a formulation fixed under sub-paragraph (1), shall make an application to the Government in Form 3 or Form 4, as the case may be, and the Government may, after calling for such information as it may consider necessary, by order, fix a revised price for such formulation.(5) Notwithstanding anything contained in the foregoing sub-paragraphs, the retail price of a formulation, specified in Category Iii of the Third Schedule ,of a manufacturer shall, until the retail price thereof is fixed under the provisions of this Order, be the price which prevailed immediately before the commencement of this Order and the manufacturer of such formulation shall not sell such formulation at a price exceeding the price which prevailed as aforesaid. (6) (a) Without prejudice to the provisions of the preceding sub-paragraphs, the Government may, if it considers necessary or expedient so to do, by notification in the Official Gazette, fix a leader price for any formulations specified in Category III of the Third Schedule and any manufacturer of such formulation may sell such formulation at a price not exceeding the price so notified and intimate the Government accordingly.(b) The provisions of sub-paragraph (2) shall not apply to such manufacturer.

New formulations require the approval of the price from the Government under paragraph 14. Under paragraph 15, power is given to the Government to revise prices of formulations from time to time. The next and the last important provision of the said order is that of the power of review contained in paragraph27, which reads as follows;

"27.Power to review. Any person aggrieved by any notification or order under paragraph 3, 4, 5, 6, 7, 9,12, 13, 14, 15 or 16 may apply to the Government for a review of the notification or order within fifteen days of the date of publication of the notification in the Official Gazette, or, as the case maybe, the receipt of the order by him and the Government may make such order on the application as it may consider necessary. "

(20) The first important question which arises for consideration is as whether or not more than one maximum sale price of a bulk drug can be fixed by the Government under the provisions of paragraph 3. The contention on behalf of the petitioners is that under paragraph 3, in respect of a bulk drug, if the same is being manufactured by more than one efficient manufacturer ,different maximum sale prices can be fixed. It was argued that according to paragraph 3(2) the maximum sale price is to be fixed having regard to the average cost of production of an efficient manufacturer and the Government is also to take into account a reasonable return on net-worth. The average cost of production and the net-worth,it was submitted, may be different in the cases of two different efficient manufacturers. Therefore, it was not possible to fix a single maximum selling price in respect of a particular bulk drug manufactured by more than one efficient manufacturer. In this connection, it was submitted that even though paragraph 3 may be capable of literal construction to the effect that only a single maximum price is envisaged but then in order to make the Dpco workable it is necessary to give to para 3 such a meaning which would not fetter the power of the Government to fix several maximum prices which would make the order more flexible and would enable the Government to meet different situations. It was also submitted that a question had arisen before the Bombay High Court whether under para 4 of the DPCO of 1970, which was akin to para 3 of Dpco of 1979,different maximum sale prices of a single bulk drug could be fixed or not. This question had been raised- in the case of Sarabhai M. Chemicals Vs. Union of India & Ors., Misc.Petition No. 616 of 1975(1), which was decided by the Bombay High Court on 415-12-78. The contention of the petitioner before the Bombay High Court had been that paragraph 4 of the Dpco of 1970 did not envisage fixing of more than one maximum selling price of a bulk drug. The Government, on the other hand, had contended that more than one maximum sale price of a single bulk drug could be fixed. This contention of the Government had been upheld. This being so ,it was not open to the respondents, it was contended before us, to plead that several maximum prices under para 3of Dpco of 1979 could not be fixed.

(21) Shri Krishnamurthy, learned counsel for the respondents, however, contended that the reading of the entire DPCO of 1979, and of para 3 in particular, would show that more than one maximum sale price of a single bulk drug, eventhough manufactured by more than one efficient manufacturer, is not postulated.

(22) It appears to us that the Dpco of 1979 does not contemplate more than one

maximum price being fixed under paragraph 3 of the said Order. The language of paragraph 3itself suggests that there can be only one maximum sale price. By sub-para (1) of para 3 the sale price which is to be fixed is of the bulk drug. If the contention of the petitioners was to be accepted then para 3 would have been differently worded so as to indicate that the sale price which had to be fixed was of the manufacturer who manufactured the bulk drug. Sub-para(2)of paragraph 3 also makes a reference to the fixing of a price of bulk drug and not fixing of a price for a manufacturer of a bulk drug. It may be that there may he difficulty in fixing one price of a bulk drug under sub-para (2) of para 3 when there is more than one efficient manufacturer of that bulk drug but the difficulty in fixing a price cannot b3 a reason or an argument for giving a different interpretation to paragraph 3. How the price can be fixed under para 3(2) where there is more than one efficient manufacturer will be dealt with by us presently. The reading of para 3, however, makes it clear that if the contention of the petitioner is accepted, some of the provisions would become unworkable. Sub-para (3) of paragraph 3states that no person is to sell a bulk drug a: a price exceeding the price notified under sub-para (1) of para 3. If more Than one price is notified unde para 3(1) then it would be difficult to apply the provisions of para 3(3). If more than one price is notified a question would immediately arise as to which is the bulk drug price which is not to be exceeded. Similar is the position with regard to a manufacturer who commences production of a bulk drug whose price is already notified.Sub-para (4) of paragraph 3 states that the said new manufacturer may sell the bulk drug at a price not exceeding a price notified .Para 3(4) would become unworkable if or a bulk drug more than one price is notified. The plain reading of paragraph 3 does not indicate that more than one maximum price can possibly be fixed by the Government.

(23) The matter may be viewed from another angle. The DPCO of 1979 has been issued u/s 3 of the Essential Commodities Act. The object of the Order, Therefore, is, interalia, to secure equitable distribution of drugs and making them available at fair prices. The spirit and aim in enacting the DPCO of 1979, and paragraphs 3 and 4 in particular, is that there should be one maximum sale price of a bulk drug. If more than one maximum selling price of bulk drug could be fixed under paragraph 3, then it would really not have been necessary to have incorporated paragraph 4 in the Dpco of 1979.Whereas the object of paragraph 3 is contained in para 3(1)itself, namely, prices are fixed to make a bulk drug "available at a fair price", paragraph 4 was enacted so as to help the industry when the Government considers it necessary or expedient so to do "for increasing the production of an indigenously manufactured bulk drug". Even though the object of paragraph4 is to help the industry, care is taken that as far as the purchaser is concerned no extra burden is put on him. Paragraph 4provides for a common selling price being fixed for a bulk drug though different retention prices may be fixed for different manufacturers .The scheme of paragraph 3 and paragraph 4,when read together, Therefore, is that under paragraph 3 a maximum selling price of a drug is fixed. The manufacturers are

free to sell the said drug at any price not exceeding the maximum price so fixed. Under paragraph 4 a manufacturer has to sell the bulk drug at a common sale price but what can be retained by the manufacturer depends upon the retention price of such bulk drug which is fixed for each manufacturer.

(24) The decision of the Bombay High Court in the case of Sarabhai M. Chemicals (supra) can have no application in the present context. Sarabhai Chemicals'' case was concerned with the fixation of price of bulk drug under the Dpco of1970. The language of paragraph 4 of Dpco of 1970 was materially different from the language of paragraph 3 of the DPCO of 1979. Moreover, in the Dpco of 1970 there was no provision similar or analogous to paragraph 4 of Dpco of1979. The Bombay High Court in Sarabhai Chemicals'' case was of the opinion that to fix a single price would be unfair to the different manufacturers or to the consumers. Realizing this unfairness which may come about the Government, while promulgating the Dpco of 1979, thought it fit to insert paragraph 4. The provisions of paragraph 4 ensure that where it is thought expedient so to do, the Government can fix selling prices not under paragraph 3 but under paragraph 4 and also simultaneously ,fix different retention prices under the said paragraph 4. Whether the prices are to be fixed under para 3Or 4 is for the Government to decide after taking into account all relevant facts and circumstances, including any representation which may be filed by any manufacturer.

(25) Before dealing with the question as to what is the full scope and effect of paragraph 3(2) of the Dpco of 1979. it is necessary to dispose of another contention of the respondents. While relying upon the decision in the case of Prag Ice & Oil Mills and another v. Union of India (1978) 3 SC 459(2) it was contended by Shri Krishnamurthy that fixation of price by an Order issued u/s 3 of the essential Commodities Act is in the nature of legislative function and, Therefore, the scope of interference is very limited. It was also contended that a price which may be unfair to the seller may still be regarded as a fair price as per section 3 of the essential Commodities Act. It is true that the Supreme Court in Prag Ice case and also in Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI), has observed that price fixing is in the nature of a legislative function, but this submission is of little assistance in the present case. If the Government, as in Prag Ice case, had fixed the maximum selling price in the Dpco itself then, possibly the scope of interference by the Court may have been negligible The challenge to such fixation of price by the Mustard Oil (Price Control) Order, 1977 in Prag Ice case, Therefore, failed. In the present case, as already noted, paragraph 3 does not fix the maximums ale price of a bulk drug. There is no challenge, to paragraph3. The contention, on the other hand, of the petitioners is that while fixing the price, paragraph 3 of the Dpco of 1979has not been complied with. The petitioners desire the fixation of price in accordance with the provisions of para 3 of the DPCO of 1979. The decision in Prag Ice case, Therefore, is of little assistance to the respondents, because whereas in Prag Ice case the challenge was to the provisions of the Control Order itself, in the present case the challenge is to the alleged on-compliance with the provisions of

the Control Order. The enactment of paragraph 3 of the Order may be a legislative act but it is open to the Court to see whether the provisions of the said paragraph 3 have or have not been violated.

(26) It was then submitted by the learned counsel for the respondents that paragraph 3(2) does not make it obligatory on the Government to rigidly follow and take into account the cost of production of an efficient manufacturer of a bulk drug and nor is it necessary to allow reasonable return on net- worth. It was submitted that sub-para (2) of paragraph 3-uses the expression "the Government may take into account. . . .". The use of the word ''may'', it was submitted, does not make it obligatory on the Government to take the two factors specified in Para 3(2) into account. We are unable to agree with this contention .Para 3(1) itself states that the fair price to be fixed will be "subject to the provisions contained in sub-para(2). . .."It is true that in para 3(2) the word used is'' may'' but in the context in which it has been used, it can only mean that the Government, while fixing the price under para 3(1),has to take into account the average cost of production of the bulk drug manufactured by an efficient manufacturer and also has to allow a reasonable return on net-worth. The provisions of para 3(2) are similar and analogous to the provisions of section 3(3) (C) of the Essential Commodities Act, which read as follows :

"3(3-C).Where any producer is required by an order made with reference to Clause (f) of sub-section (2)to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3-A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount Therefore which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to (a) the minimum price, if any, fixed for sugarcane by the Central Government under this section:(b) the manufacturing cost of sugar;(c) the duty or tax, if any, paid or payable there on ;and(e) the securing of a reasonable return on the capital employed in the business of manufacturing sugar ,and different prices may be determined, from time to time, for different areas, or for different factories or for different kinds of sugar. Explanation .For the purpose of this section," producer "means a person carrying on the business or manufacturing sugar."

While construing section 3(3-C) of the Essential Commodities Act a question had arisen whether reasonable return on the. capital employed had to be given or not. It was held in the case of The Panipat Co-operative Sugar Mills Vs. The Union of India (UOI), and in Anakapalle Co-op. Agrl. and Industrial Society Ltd., Vs. Union of India (UOI) and Others, that u/s 3(3-C) of the essential Commodities Act it was statutorily obligatory to ensure to the industry a reasonable return on the capital employed in the business of manufacturing-

sugar. This Court also had an occasion to deal with section 3(3-C) in the case of Sugar Mills Co. Ltd. and Another Vs. Joint Secretary (Sugar), Govt. of India and Others, . After referring to Panipat Sugar Mills'' case and also to Prag Ice case, this Court observed that section 3(3-C) of the Essential Commodities Act did not permit the Government to ignore any of the four postulates provide in that section. This was notwithstanding the fact that in section 3(3-C) itself the expression used was ".....the Central Government may, by order, determine, having regard to the four". The use of the word ''may'' did not give the power to the Government to ignore any of the four factors mentioned in section 3(3-C).Similarly the use of the word ''may'' in paragraph 3(2) of the DPCO of 1979 would not enable the Government to disregard the cost of production and the return on net-worth.

(27) Two things which have to be taken into account while fixing the maximum price of bulk drug are the average cost of production of an efficient manufacturer and the net-worth on which reasonable return has to be allowed. In the case of bulk drug which is being manufactured by only one manufacturer, the fixation of price may not present much difficulty. In such a case the price will be fixed after taking into account the average cost of production of that manufacturer and, infixing the price, the Government will also allow a reasonable return on net-worth. Net-worth has been defined by para2(m) read with para 2(g) of the Grocer in the case of an efficient manufacturer, it means the share capital plus free reserves .Literally construed, the Government will have to allow a reasonable return on the net-worth of a manufacturer notwithstanding the fact that the said manufacturer may behaving other business activity also in which part of his share capital is employed and out of which some of its free reserves, are created. Could the intention of para 2, Therefore, be that in the case of a bulk drug manufacturer, who has other business activity also, the reasonable return has to be on the net-worth of the entire business activity or is the net-worth to be apportioned to the extent to which the business activity consists of the manufacture of bulk drug ? Keeping in view the nature of the legislation, para 3(2) has to be so construed so as not to allow any unconscionable gains to a manufacturer which would result in fixing of a high price of a bulk drug. Para 3(2) read with. paras 2(m) and 2(g), Therefore, have to be construed so as to mean the allowance of reasonable return on net-worth of a manufacturer to the extent it can be apportioned or allocated to the manufacturer''s activity of the manufacture of bulk drug of which the price under paragraph 3(1)is to be fixed.

(28) The next question which arises for consideration is as to what happens if there is more than one efficient manufacturer of a bulk drug. Paragraph 3 is silent on this point. We have already held that para 3 postulates the fixation of only a single maximum bulk drug price. Para 3(2) requires the Government to take particulars of an efficient manufacturer while fixing the price. Efficient manufacture has been defined in Explanation to paragraph 2(m). The only reasonable manner in which para 3(2) can be made workable in cases where there are more than one efficient manufacturers would be to take weighted

average of the cost of production of the two or more efficient manufacturers and also weighted average of the net-worth and then to allow a reasonable return thereon. The taking into account of the cost of production and the net-worth of only one or two or more efficient manufacturers would be unfair and discriminatory to those efficient manufacturers whose cost and net worth is ignored. The use of the expression "may take into account" in paragraph 3(2) gives the Government a bit of below room in fixing the price. It would mean that the Government should take the weighted cost of production of all the efficient manufacturers and also their respective net-worth and thereafter fix the price of a bulk drug. This, in our opinion, is the only way in which paragraph 3(2) can be made workable.

(29) It was submitted on behalf of the petitioners that, while issuing the impugned notification whereby drug prices were fixed, the Government did not take into consideration the cost of production nor did it allow reasonable return on the net- worth. It is not necessary for us to go into this question at this stage and examine all the facts for ourselves because we are of the opinion that the impugned notifications are liable to be quashed because of non-compliance with the principles of natural justice .

(30) It is not in dispute that the maximum prices of bulk drugs, as well as of the formulation, had been fixed by the Government prior to the coming into fores of the Dpco of1979. As regards the bulk drugs, para3(3) proviso provided that till price of bulk drug was notified under paragraph 3(1)of the Dpco of 1979, no manufacturer, after the commencement of the Dpco of 1979, shall sell bulk drug in excess of the price so fixed. In other words, the prevailing bulk drug prices were given statutory recognition by the Dpco of 1979. The manufacturers got a statutory right to sell the bulk drugs at the prices which were prevailing prior to the promulgation of the DPCO of 1979. By the impugned notifications what the Government has sought to do is to alter these prices. By the said notifications the bulk drug prices which were prevailing were sought to be reduced. The petitioners have been asking for the increase of the prices of bulk drugs because, according to them, the cost of production etc. had gone up. As we are not required to express any opinion in these cases on the question as to whether rules of natural justice will be attracted where a bulk drug price is fixed for the first time u/s 3 of the Essential Commodities Act, we refrain from expressing any opinion. We are, however, of the view that when there is a price of a drug which has been statutorily fixed then it would be unfair to alter the same to the prejudice of a manufacturer without giving him an opportunity of being heard. By virtue of paragraph 3of the Dpco manufacturer had a statutory right to charge a particular price which had been fixed prior to the Dpco of 1979.Any variation of this price to his detriment, would cause civil consequences .It is now well settled that no action adverse to a person will be taken without that person being afforded reasonable opportunity of at least representing its case. It is true that in the case of Saraswati Industrial Syndicate (supra)it was stated that fixation of price was in the nature of legislative measure, and it could not give rise to a

complaint that the rule of natural justice has not been followed, but that was a case where the price was fixed for the first time. Though the judicial thinking in recent times appears to be in favor of invoking the principles of natural justice even in such a case, nevertheless ,the ratio in the decision of Saraswati Industrial Syndicate''s case need not detain us because in the present case the bulk drug price is not being fixed for the first time out what is being done is that the price already fixed is sought to be altered to the detriment of the petitioners. It may not be necessary in this connection to give a personal hearing to a manufacturer, but the manufacturer must be informed as to the basis on which the Government wishes to alter the price and it should give the manufacturer an opportunity of making a representation in order to explain its point of view. That would be the minimum requirement which is expected in such a case. It should be borne in mind that the frontiers of natural justice have been extended even to cases of the renewal of licenses. In the case of Raj Restaurant and Another Vs. Municipal Corporation of Delhi, , the Supreme Court held that the refusal to give license or cancellation or revocation of license would be visited with both civil and pecuniary consequences and, Therefore the minimum principle of natural justice of notice and opporunity to represent one''s case was a must. The same principle would apply to the present case. As we have already observed ,the alteration of the price of the bulk drugs to the detriment of the manufacturers would be visited with both civil and pecuniary consequences and, Therefore, the minimum adherence to the principle of natural justice would demand the issuance of a notice by the Government spelling out of the factors on the basis of which it intends to alter the price, and the giving of an opportunity to the manufacturer to represent its case.

(31) The matter may be viewed from another angle. Price is fixed by the Government under paragraph 3 on the basis of certain material. Fixation of price without any material or basis would per se be arbitrary and bad in law. But where the Government has obtained material which may justify the alteration of price, it is but fair that the manufacturer who is going to be adversely affected by the re-fixation of price is told or informed about the material which the Government has been able to obtain and on which it wants to rely. The manufacturer has to be given an opportunity to make an effective representation. The opportunity which is to be given has to be meaningful and has not to be an eye-wash. Any price which is fixed without complying with the minimum requirement of the principles of natural justice will, Therefore, be bad in law and has to be quashed .

(32) It may be that under certain circumstances it may not be practical or feasible to give such an opportunity before fixing or revising a bulk drug price. In such a case at least post facto hearing ought to be given. In this connection we may refer to the provisions of para 27 of the Dpco of 1979 that enables any person, inter alia, aggrieved by the price of bulk drug or formulation which is fixed to apply for a review to the Central Government. This review would be obviously meaningless and incomplete unless and until the manufacturer is

informed about the basis which has been adopted by the Government in revising the price. The review would be effective and meaningful if, at least whenever demanded, the Central Government informs the manufacturer, who is aggrieved, about the material which it has collected on the basis of which the price has been fixed or revised. The mere fact that the material on which the Government has acted is the one supplied by other efficient manufacturer would not entitle the Government to holdback that material.

(33) In the present case it is not denied that no such opportunity was given to the petitioners prior to the issuance of the various notifications whereby the prices of the bulk drugs as well as formulations were revised or fixed. The petitioners have had to file applications for review under paragraph 27 without knowing the basis on which the various notifications have been issued by the Government fixing different prices. In the return filed by the respondents, the material was again not disclosed. It is only during the course of hearing of the writ petitions that some, though not all, facts and figures on the basis of which the Government had acted had been placed before us. The principles of natural justice would require that these and the other relevant facts and figures, are told to the petitioners who should then be given an opportunity of making a representation.

(34) While on this question, there is one other aspect on which we would like to dwell. After the prices of bulk drugs or formulations are notified, it becomes incumbent upon the manufacturer and the seller not to sell the drugs in excess of the prices so notified. Paragraph 27 requires an application for review being filled within 15 days of the date of publication of the notification in the Official Gazette whereby the prices are notified. It is true that the Dpco of 1979 does not contain any provision which makes it incumbent upon the Government to dispose of the review petition filed under paragraph27 within any specified period. In view, however, of the fact that the notified prices become immediately applicable, it is only fair and proper that any application for review which is filed under para 27 should be disposed of as expeditiously as737possible. If unreasonable time is taken in disposing of such application ,it will create complications. For example, the fixation of price of a bulk drug would also affect the fixation of price of the formulations. If the fixation of price of a bulk drug is under challenge, by way of a review, it will be impractical to fix the price of formulations.

(35) In view of the fact that the notifications fixing the bulk drug prices have to be quashed because of non-compliance with the principles of natural justice, it must follow that the notifications whereby the prices of various formulations were also fixed have also to be set-aside. ''The prices of formulations can only be fixed or altered after the prices of the bulk drugs are finally determined because the bulk: drugs are part of the raw-materials for the manufacture of the formulations and the price of the bulk drug, which has to bs paid, is taken into consideration while determining the price of the formulations.

(36) The learned counsel for the petitioners had also challenged the notifications fixing the prices of bulk drugs and formul

(37) In the case of manufacturers of bulk drug, it was contended that some of the manufacturers are incurring expenses with regard to research and development of new bulk drugs. The submission of the petitioners was that the expenses so incurred have to be taken into consideration by the respondents while calculating the cost of production of the bulk drugs, for the purposes of fixing the price under paragraph 3 of the said Order. The respondents, in their return, have not denied that research and development expenses have to be allowed. The case of the respondents is that research and development expenses were to be allocated between bulk drugs and formulations on the basis of the ratio of conversion cost or bulk drugs to the total conversion cost of bulk drugs plus formulations. This case of the respondents was made known to the petitioners at the meeting held on 2nd February, 19S3. If the manufacturers are aggrieved by this principle which has been adopted by the repsondents, then it will be open to them to agitate the same and to make such submissions as they may be advised. At this stage we would hesitate to express any opinion as to whether the allocation of the expenses by the Government in the aforesaid manner was proper or not. We however, do note that it is not the case of the respondents that research and development expenses are not allowable at all while computing the cost of production of bulk drugs. In fact, the respondents are stated to have taken a portion of the research and development expenses into account while computing the cost or production of bulk drugs. But what extent these expenses would be includable in computing the cost of production of bulk drug will have to be decided by the respondents after they have obtained all the material from the manufacturers and they have made now to the manufacturers the basis which the respondents intend to follow in this behalf.

(38) Before parting, we may note that Shri Krishnamuurthy had sought to contend that on a correct interpretation of the order, research and development expenses may not be taken into consideration while computing the cost of production. It is not open to the learned counsel to raise such a contention. Firstly ,as already noted, in the return to the writ petition no such contention has been raised; secondly the Government itself has allowed and taken part of the research and development expenses into account while working out the cost of production and ;thirdly, Schedule I of the Cost Accounting Records (Bulk-Drugs) Rules, 1974 also indicates that such expenses are to betaken into account while determining the cost of production. Para Xv of the said Schedule, which refers to research and development expenses, reads as follows.

"Research and development expenses : Adequate records showing the details of expenses incurred by the company for the development of existing products or new products or processes, if any, shall be maintained separately. If the Research and Development Department is also engaged in the design and development of the Plant facilities, the appropriate share thereof shall be capitalised. The method

of charging research and development expenses to the cost of production shall be indicated in the relevant cost records and such expenses shall be charged to bulk drugs and intermediates on a reasonable basis."

Moreover proforma B of Schedule Ii of the Rules prescribed the form of statement showing cost of the particular intermediate/final bulk drug, manufactured during the year. Under Item 8 of the particulars to be kept and maintained on the basis of unit-wise (i.e. per Kg.) cost of production, is "Research & Development". This also indicates that there is statutory recognition of the fact that research and development expenses are to be taken into consideration while working out the cost of production.

(39) In working out the price of formulations, the respondents have taken into consideration the minimum bonus which is payable under the Payment of Bonus Act. The contention of the petitioners is that this practice which is adopted by the respondents is not warranted. According to the petitioners, it pays to its employees bonus which it is required to pay in accordance with law, either by virtue of the provisions of the Payment of Bonus Act or because of any agreement which may have been entered into between the management and the workers or any other bonus which the management thinks it proper to allow to its workmen and other staff. The submission of the petitioners is that cost of production cannot be correctly worked out without taking into account the actual bonus which is paid by the manufacturers. A manufacturer has to incur various types of expenses in the manufacture of bulk drugs. It is obligatory on the manufacturer, to whom the Payment of Bonus Act applies, to pay bonus in accordance with the said Act .Payment of bonus under the Act or in furtherance of an agreement between the staff and the management would be a necessary outgoing and is an expense which has to be taken into consideration while working out the cost of production. It is true that in the proforma prescribed in the Fourth Schedule to the Drugs (Price Control) Order, 1979 bonus in excess of statutory minimum is to be excluded from cost. This is provided in the notes to the said proforma. In our opinion, there is no warrant for excluding any such expense. It will be seen that in the notes it is also provided that expenses not recognised by the Income Tax Authorities (salary, perquisities,advertisement, etc.) are to be excluded from cost. It would mean that salary, perquisites etc. which are paid and allowed by the Income tax authorities are to be included in computing the cost of production. If this is so, we fail to understand as to why bonus, whether it be statutory minimum or otherwise. which is allowable by the Income tax authorities can possibly be ignored, wholly or in part while computing the cost of production. In our opinion, every statutory and other outgoing of a manufacturer which is allowable by the Income Tax authorities has to be taken into consideration while computing the cost of production. To restrict the allowance only to the extent of statutory minimum would be unfair, unjust and incorrect as the manufacturer cannot escape his liability of payment of bonus of an amount larger than the minimum bonus if in law the manufacturer is so obliged to make the payment. It is, of course, clarified that the expenses which

are allowable by the Incometax Authorities and which are to be taken into consideration for the purpose of determining the cost of manufacture are only those expenses which are relatable to the cost of manufacture of the bulk drugs or formulations in question.

(40) Another question on which there is considerable divergence between the parties is with regard to the working of the formula provided in paragraph 10 of the Order with regard to the fixation of the retail price of formulations. According to the petitioners, para 10 requires that norms on which conversion cost, cost of packing material and packing charges are to be calculated have to be notified by the Government from time to time in the Official Gazette. The submission was that this was not being done. On the other hand, the respondents contend that by order dated 3/05/1979 the norms have been fixed. Our attention has been drawn to the said Order. The said Order merely lays down the conversion cost and the packing charges which have to be taken into consideration while fixing the price of formulations. The basis on which these costs have been arrived at is not indicated. What is required to be notified under paragraph 10 is not the conversion cost or the packing charges but the norms on which the same are to be calculated. The petitioners are justified in contending that they do not know as to what is the basis or norms adopted while fixing the conversion cost and packing charges by order dated 3/05/1979.As regards packing material, it is admitted that no notification at all has been issued. It is true that in the notification of3-5-79 it is said that norms for conversion cost and packing charges are being issued, but the plain reading of the said notification shows that the norms are not indicated. It is only the conversion cost and packing charges arrived at by the Central Government which have been notified. We dare say that these conversion costs and packing charges must have been arrived at by the Government by applying same norms. What those norms or principles are, have not been indicated or disposed either to this Court or to the petitioners. In our opinion, Therefore, while fixing the price of formulations the respondents must inform the petitioners as to the basis of the calculation of the conversion cost, packing charges and cost of packing material. The Government should take into consideration the representations and the submissions which the petitioners may make in this behalf before determining the conversion cost, cost of packing material and packing charges. Furthermore, unless and until the norms as postulated by paragraph 10 are notified, which norms again ought not to be arbitrary or unrealistic, the petitioners would be entitled to contend that the actual cost of conversion ,the actual cost of packing material and the actual packing charges incurred should be taken into consideration while fixing the price of the formulations. If however, the Central Government feels that there is justification for ignoring the figures so submitted by the petitioners, it should give out its mind to the petitioners, let them make a representation and then take a final decision in the matter.

(41) The petitioners also raised contentions with regard to the mark-up it should be allowed and the categorisation of the drugs .These are submissions which, in

our opinion, should be made before the Governmental Authorities. The Government, we are sure, will take all the facts and circumstances into consideration before taking a decision. Similarly, as to who can be regarded as an efficient manufacturer will also have to be decided by the Government. If the Government is of the opinion that more than one manufacturer is to be regarded asan "efficient manufacturer" within the provisions of paragraph3 of the Order then in working out the weighted cost of production etc. the figures which are supplied by the manufacturers should be made known to the other efficient manufacturers before a final decision is taken.

(42) Briefly stated, the conclusions which we have arrived at herein above are as follows :

1.Under Paragraph 3 of the D.P.C.O. of 1979 only one maximum sale price of bulk drug can be fixed. Where different prices are considered to be more appropriate for different manufactures, recourse will have to be taken to paragraph 4 of the D.P.C.O.

2.While re-fixing the sale price of bulk drugs or formulations, principles of natural justice are applicable. Particulars on the basis of which the prices are to be re-fixed should be made known to the manufacturers, opportunity given to them to make a representation and then a decision taken.

3.In cases where prices are fixed for the first time it may not be necessary to allow a representation to be made before the prices are fixed. Where, however, an application for review is filed under paragraph 27 then, on being required to do so, the Government should supply all the material which it has taken into consideration while notifying the prices. This procedure has also to be adopted by the Government even in those cases where prices have been fixed and where such opportunity had not been granted earlier.

4.All expenses which are allowable by the Income Tax Authorities, including bonus actually paid and other statutory expenses incurred, in so fur as they relate to the manufacture of drugs, have to be taken into consideration while computing the cost of production.

5.Expenses incurred on-research and development have also to be taken into consideration while computing the cost of production.

6.Norms regarding packing charges, conversion cost and cost of packing material have to bs notified. Till such norms are notified, in fixing the prices of formulations the actual expenses so incurred by the formulators have to be taken into consideration.

7.All questions regarding categorisation of formulations, quantum of return on capital /net-worth, cost of production, who is an efficient manufacturer etc. are to be raised before the Government Authorities who will decide the same after giving a reasonable opportunity to the manufacturers and after the Government has disclosed the basis on which it had fixed or re-fixed the prices of bulk drugs

and formulations.

(43) For the aforesaid reasons the writ petitions are and formulations. impugned orders fixing the price of bulk drugs and formulations are quashed. The petitioners have, in respect of all the orders which have been challenged in these petitions, filed review applications under paragraph 27 of the Dpco of 1979which are pending. Regarding the disposal of the said review applications, we give the following directions :-

(A)Within 15 days from today the petitioners shall write to the Government asking for the particulars which they want in order to challenge the prices which have been notified.

(B)Within 2 months of the receipt of the said letters the Government will furnish the particulars asked for ,in so far as they are available with the Government, to the petitioners.

(C)The petitioners shall make the representation to the Government within one month thereafter.

(D)The Government will finally decide the review applications within two months of the receipt by the Government of the said representations. Before deciding the applications, the Government may if it so deems necessary, give a personal hearing to there preventatives of the petitioners.

(44) We further direct that until prices are re-fixed after the disposal of the review applications under paragraph 27, the status quo on the prices of bulk drugs and formulations prevailing prior to the issue of the impugned notifications shall be maintained subject to the condition that wherever the existing prices of bulk drugs and formulations fixed subsequent to the filing of the writ petitions are higher than the prices fixed earlier, then the subsequent notified prices would prevail. The petitioners will be entitled to costs. Petitions allowed.

