(2008) 07 DEL CK 0089

In the Delhi High Court

Case No : Writ Petition (C) 5245 of 1998

Johnson and Johnson Ltd. — APPELLANT

Vs

National Pharmaceuticals Pricing Authority and Others — RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Citation : (2008) 104 DRJ 531

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S. Ganesh, Napur Singh and Rajan Narain, for the Appellant; Gaurav Duggal, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner challenges the legality of two orders dated 20.4.1998 and 01.11.2002 by the first respondent. It also seeks a direction to disclose to it complete and detailed cost data with all relevant break ups and particulars relating to price fixation made on 07.08.1996 and consider and dispose of its application for review in accordance with law after granting it suitable opportunity of hearing.

2. The facts are briefly set out hereafter that the petitioner at the relevant time was manufacturing "Raricap" iron tablets. The product was originally manufactured by one M/s. Ethnor Ltd. It is contended that the said M/s. Ethnor Ltd. had on 24.11.1989, applied to the Central Government, for price approval of the Tablet at Rs. 25.01 per pack. Sometime in 1994, M/s Ethnor Ltd apparently was merged or taken over by the petitioner, which continued to market the product. On 07.08.1996, exercising powers under Para 8 of the Drugs (Price Control) Order, 1995 (hereafter called "DPCO-95") the Central Government revised the price of Raricap Tablets, for a pack of 40 and fixed the cost at Rs. 16.24.

3. The petitioner by its letter dated 19.8.1996, claimed that the price was approved at Rs. 25.01 in 1989 under the then existing Control Order i.e.

DPCO-87. It claimed that the price of the tablet continued to remain unchanged and even as on date i.e. 19.8.1996 the price at which it was sold was as per the price earlier approved by the Central Government. The petitioner sought for cost data and other material to enable it to prefer a review to the Central Government under Para 22 of the DPCO-95. This letter was followed up with subsequent letters and telegrams dated 24.9.1996, 08.10.1996, 31.10.1996 and 21.11.1996. The petitioner also contended that the input costs, for the product, had not decreased.

4. On 06.12.1996, the Central Government alleged that the petitioner was over charging and selling the product i.e. Raricap Tablets at prices exceeding the cost fixed. It accordingly directed the petitioner to sell the product at the said cost i.e. Rs. 16.24, per pack. The petitioner replied on 16.12.199?, again seeking for details and particulars to enable a meaningful review. On 17.10.1997, the Central Government addressed a letter to the petitioner. The same is in the following terms:

No. 9(14)/96-PI(II)

Government of India

Ministry of Chemicals and Fertilizers

Department of Chemicals and Petrochemicals

Shastri-Bhawan

New Delhi, the 17-10-97

To,

M/s. Johnson & Johnson Ltd.

30, Forjett Street

P.O. Box No. 9301

Bombay--400036

Subject: Price fixation of Raricaps Tablets 40''s and Respren Tablets

Sir,

I am directed to refer to your letter dated July 30, 1997 on the above mentioned subject and to forward herewith the break-up details for working out the price of Raricaps Tablets as under:

Rs. Material costs 4.98 C.C. 0.68 P.M. 1.41 P.C. 0.40 Cost of Production 7.20 MAPE 7.20 Price Worked out 14.40 E.D. 1.84 Final Price worked out 16.24

In this context it is mentioned that the price for the above formulation was fixed on 7.8.95 and it is more than a year that you have not submitted the price list in form V as required under DPCO, 95. You are advised to follow the price already

fixed failing which you will be flouting the provisions of DPCO, 95 and will, therefore be liable for prosecution under DPCO, 95.

Yours faithfully,

sd/-

(J.S. SIDHU)

Desk Officer

5. The petitioner replied on 29.10.1997, stating that further particulars were necessary since the Central Government had based its costing on the material cost at Rs. 4.98, Conversion Cost at Rs. 0.68, Packing material at Rs. 1.41 and Packaging Cost at Rs. 0.40. The petitioner claims that actual material cost, packing material cost were substantially higher and also that conversion and packing costs, fixed in accordance with notional norms were not tenable, as the actual cost incurred was considerably higher. It claimed that the DPCO required consideration of actual not notional costs. In these circumstances, the petitioner sought review of its proposal and asked for review of the order directing reduction of the retail price to Rs. 16.24 per packet.

6. On 20.4.1998, the Central Government rejected the request preferred by the petitioner in the following terms:

No. 9(14)/96-PI(II)

Government of India

Ministry of Chemicals and Fertilizers

Department of Chemicals and Petrochemicals

Shastri Bhawan

New Delhi, the 20-04-1998

To,

M/s. Johnson & Johnson Ltd.

30, Forjett Street

P.O. Box No. 9301

Bombay--400036

Subject: Price fixation of Raricaps Tablets 40''s of M/s. Johnson & Johnson

Sir,

I am directed to refer to your review application dated October 29, 1997 on the above mentioned subject and to state that your review application is time barred as it was filed after a lapse of more than 14 months as against the permissible

time limit of15 days from the date of notification under the provisions of Para 22 of DPCO, 1995. The order fixing the price of Raricap Tablets 40''s was dated 7.8.1996.

On the basis of the position mentioned above your request for review of the price of Raricap Tablets 40''s is hereby rejected.

You are directed to follow the price fixed vide this Department''s Order No. 9(l4)/96-PLII dated 7.8.1996. In case you have any grievances, against this Order, you are advised to follow the course prescribed in para 3or8ofDPCO, 1995. This issues with the approval of Minister (C & F).

Yours faithfully,

sd/-

(J.S.SIDHU)

Desk Officer

7. The petitioner claimed to be aggrieved and approached this Court. It also sought for quashing of directions made by the Government in its order dated 24.9.1998, ordering it to pay Rs. 5,31,95,580/- with interest. The writ petition was admitted on 23.11.1998 when the Court directed the petitioner to deposit Rs. 1.50 crores with the respondents. During pendency of these proceedings, the respondents had issued a further show cause notice on 26.2.2001 alleging that the petitioner had over-charged while selling Raricap Tablets during August 1996 to March 1997. The petitioner denied these allegations; after hearing its submissions, the respondents by the second impugned order dated 1.11.2002 confirmed the demand to an extent of Rs. 56,44,248/-.

8. The challenge in these proceedings to the fixation initially made on 7.8.1996 mainly hinges upon the lack of particulars in support of the cost determined by the Central Government. It is contended that product is a sugar coated tablets containing ingredients of which Vitamin-B2 (present to the extent of 2.0 mg) and Vitamin-C (present to the extent 35 mg) are scheduled bulk drugs whose prices are regulated under the DPCO-95. The petitioner contends that even concerning these elements, its actual consumption according to the DCPO-95 is ascertainable through proper costing which implies an industry or unit specific cost study and analysis. Such analysis is case specific as the data, the petitioner alleges, is otherwise not available with the Government. It is contended that the cost fixation has resulted in reduction to the tune of almost 40%, and is therefore, arbitrary.

9. It is contended and urged that the impugned orders to the extent they upheld the price fixation are arbitrary because they do not specify the rationale for such price reduction; a rationale was essential since the product was being sold at Rs. 25.01 per pack for about seven years when its retail price was abruptly reduced. The petitioner relies upon the provisions of DPCO-95, particularly, para 7. It also

asserts that conversion costs, an essential mechanism in the price fixation exercise, in turn depends upon norm fixation every year through notification in the Official Gazette which was absent in this case. It is also averred that in order to effectuate a meaningful review, the necessary cost break up on each head such as material cost, packaging cost etc. had to be disclosed, but was not done. The impugned orders are therefore attacked as illegal being contrary to the DPCO-95 and arbitrary in not considering relevant factors and ignoring the materials sought to be placed on record by the petitioner.

10. The Central Government had resisted the petition initially by filing a return. After the writ petition was permitted to be amended to incorporate the challenge to the subsequent to-order dated 01.11.2002, it filed a counter affidavit to the amended writ petition on 28.07.2003. The Central Government locates its power to fix the retail price of a scheduled formulation under Tara 8(1) and para 9(1). It claims that the petitioner''s allegations are groundless and are aimed at recovering profit. According to the Central Government, in fixing the retail price, the material cost, norms for conversion and packing costs prevalent in 1996 were duly considered. It asserts that the petitioner should have claimed a review within the time frame stipulated in Para 22 of the DPCO.

11. The Central Government contends that its communication dated 17.10.1993 had intimated the petitioner about the latter''s failure to set out the price list in accordance with Form-V required under DPCO-95 and as a result the price was fixed on 07.08.1996. The petitioner, however, did not show any regard to the price fixation and continued to recover higher costs i.e. in excess of Rs. 25.01 pack. This fully justified the Central Government''s action in recovering the excess amounts.

12. The Central Government asserts that on 10.1.1996 it required the petitioner to seek fresh price approval and that the petitioner by its letter dated 25.01.1996, declined to apply for price approval. The Central Government claims that retail price of the formulation was fixed at about 90% of the material cost,*claimed by the petitioner company was allowed, in the light of the prevalent, norms in 1996 and declining material costs on similar products. It is alleged that in respect of Conversion Cost, Packaging Cost and Process Loss, the Central Government appointed a Committee on 24.9.1995 to review the existing norms. It claims that necessary information had to be collected from the drug industry to assess the actual cost incurred on account of conversion cost, packing charges and process loss so as to develop norms for the future.

13. It is averred that even though the industry was asked to provide necessary information, no data was forthcoming and consequently the Committee after considering various aspects including new technologies, high capacities available and also the losses concluded that there are existed a possible cushion in the existing norms which more than off-set inflation. The Central Government also alleges that the price application though dated 24.11.1989, was actually submitted by the petitioner 1996 and that the determination on 7.8.1996 was

upon such an application.

14. Mr. Section Ganesh, learned senior counsel for the petitioner submitted that the drastic reduction of the retail price of Raricap was to an extent of 35%; it cannot be justified through objective data available with the respondents. In fact, counsel contended that over the period of seven years, there were sizeable increases in the costs of industrial materials including raw-materials and ingredients used for the manufacture of tablets which were not subject to the price control. The respondents were under an obligation to make an enquiry into the petitioner''s costs. It was contended that the items of cost considered for the impunged price fixation were disclosed by the first time in the order dated 01.11.2002. The material cost was taken at 90% of the cost disclosed by M/s. Ethnor Ltd. in November 1989. This was adopted in 1996, on an untenable ground that material costs in similar formulation were showing a declining trend without revealing any price. It was contended that main raw-material i.e. Ferrous Calcium Citrate, which is not regulated by the DPCO had risen of 85% during 1989-1996. Therefore, in fixing the price, basing upon costs incurred seven years previously was entirely arbitrary and vitiated the orders.

15. Learned Counsel submitted that no conversion cost norm was available, relation to a site-specific multi-layered tablet like Raricap which was unlike any other formulation. It was submitted in this context, by placing reliance upon the reply to the show cause notice furnished by the petitioner on 15.3.2001, that the existing norms fixed in 1993 related to sustained dose release formulations which were inapplicable. Counsel contended that in any case having regard to the specific mandate of conversion cost, in para 7 of DPCO-95 which provided as follows:

CC means Conversion Cost worked out in accordance with established procedure of costing and shall be fixed as a norm every year by notification in the Official Gazette....

16. It was also submitted that the conversion cost, in any event, premised on obsolete data could not have been the basis of the price fixed in 1996. Learned Counsel submitted that the price fixation was plainly illegal and arbitrary as it was opposed to the mandate of para 7 which require an annual revision in the conversion cost rates.

17. Learned Counsel contended that the statutory right of review was defeated by the dilatory tactics and the opaqueness of the respondents in disclosing particulars on 21.9.1997. It is submitted that the petitioner''s letter dated 29.10.1997 was not a review application as is evident from its bare reading but one seeking further particulars to enable a meaningful review petition. Counsel contended that even the order dated 01.11.2002 had premised itself on the basis of the review application having been dealt with and disposed of on 20.4.1998.

18. Learned Counsel relied upon a decision of the Supreme Court reported as Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., It

was contended that the Supreme Court defined the scope of review contemplated in the Drug Price Control Order as one based on an application made after disclosure of relevant information which may reasonably pertain to the average cost of production of the bulk drug by the efficient and the reasonable return on net worth. It was submitted that such information may include elements which are taken into account and those which are excluded. Therefore, without proper disclosure of the material which persuaded the Central Government to decide upon a particular course of action, the consideration of a case for review would be shallow and meaningless.

19. Mr. Gaurav Duggal, learned Counsel for the respondent, submitted that the Government of India/NPPA is empowered to fix and notify the maximum sale price of the Scheduled Bulk Drugs and the retail price of the related formulations under Paras 3, 8 and 9 of DPCO''95, which superceded DPCO of 1987. It was contended that Para 8(2) mandated that upon revision of any bulk drug, a manufacturer is utilizing such bulk drug in his scheduled formulation, may make an application to the Government for a price revision of such formulations and the Government may if it considers necessary, fix or revise the price of such formulation. Counsel contended that Para 8 presents an option to the manufacturer to make an application before the Government for fixation or revision of the price revision which has taken place. This, contends the respondent, was not utilized by the Petitioner and it instead went on manufacturing and selling the said formulation of RARICAP tablets at price of Rs. 2.5.01, which was above the price fixed by the Central Government.

20. Learned Counsel submitted that the Petitioner applied for a review after a monumental delay or 14 months, on faulty reasoning. He attacked the argument of unavailability of cost data as an excuse and submitted that the petitioner did not show how the fixation by the Central Government on 7-8-1996 was illegal. It was contended that there was no provision to enable the Government to supply such data.

21. It was submitted that Drug Price Control Orders are primarily issued in public interest with a view to see that huge pharmaceutical Companies and Corporations such as the Petitioner do not exploit their position and sell a particular drug or formulation which in many cases are life saving drugs at prices to suit their own convenience for the purpose of maximizing their profits. It was urged that the retail price of the Raricap formulation was fixed after due consideration of the cost components. Around 90 per cent of the material cost claimed by the Petitioner in the said application were allowed, in the light of the prevalent norms in 1996 and the declining material cost of similar formulation.

22. Learned Counsel contended that under the provisions of DPCO''95, the conversion cost, cost of packing material and packing charges and 100% MAPE (Maximum Allowable Post Manufacturing Expenses) were also provided for. Being a legislative exercise, as drug price fixation exercises are, there are limits to participation by individual manufacturers; they cannot dictate that their

subjective factors should dictate public interest.

23. Learned Counsel submitted that in respect of norms for Conversion Cost, Packing Charges and Process loss under the provisions of DPCO''95, the Central Government had appointed a committee on 24.9.1995 to, inter alia, review the existing norms and to suggest any revisions if required. For this, it was necessary to collect relevant information from the industry and to assess the actual cost incurred on account the heads of enumerated costs, to enable development of norms for the future.

24. The sequence of events traced above shows that the petitioner was issued an order, on 7-8-1996, fixing the retail price of Raricap iron tablets. The product contains two elements, for which price fixation has to be done by the Central Government. It is urged that the extent of use of such elements is minimal; the other, non scheduled drug ingredients amount to 90% of the inputs. The petitioners'' contention is that the price fixation was resorted to without making a cost inquiry, which is essential for a realistic assessment of each manufacturer''s inputs and allowable expenditure. Reliance is placed, particularly on the formula indicated in Para 7 of the DCPO-95. The petitioner also claims to be aggrieved by the failure of the respondents to give a detailed break up of the cost analysis conducted by them. It is urged that what in fact, was furnished was the input wise cost determined, not the process whereby such cost was determined. The respondent''s position is that the petitioner sought to rely on an application, dated sometime in 1989, but filed in 1996; that was the basis for the impugned price fixation. It urges that 90% of the manufacturing cost indicated has been allowed, based on the norms subsisting in 1996. It is also submitted that the Central Government did not act unreasonably in basing itself on the norms of 1993, since its efforts at revising them were thwarted by the industry; in any case, the official experts reported that the induction of new technologies and development of capacities by manufacturers enabled them to absorb what were perceived as losses.

25. The crux of this case, in the opinion of this court, rests on an interpretation of Paragraph 7 of DCPO-95, (which replaced DCPO 1987). Para 7 states as follows:

CALCULATION OF RETAIL PRICE OF FORMULATION--The retail price of a formulation shall be calculated by the Government in accordance with the following formula, namely:

R.P. = (M.C. + C.C. + P.M. + P.C.) x (1 + MAPE/100) + E.D.

"R.P." means retail price.

"M.C." means material cost and includes the cost of drugs and other pharmaceutical aids used including overages, if any, and process loss there on 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.

"C.C" means conversion cost worked out in accordance with established procedures of costing and shall be fixed as a norm every year by notification in the Official Gazettee in this behalf.

"P.M." means the cost of packing material used in the packing of a concerned formulation, including process loss, and shall be fixed as a norm every year by notification in the Official Gazettee in this behalf.

"P.C." means packing charges worked out in accordance with established procedures of costing and shall be fixed as a norm every year by notification in the Official Gazette in this behalf.

"MAPE" (Maximum Allowable Post Manufacturing Expenses) means all costs incurred by a manufacturer from the stage of ex-factory cost to retailing and includes trade margin and margin for the manufacturer and it shall not exceed One hundred per cent for indigenously manufactured Scheduled formulations:

"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 alongwith such margin to cover selling and distribution expenses including interest and importer''s profit which shall not exceed fifty per cent of the landed cost.

Explanation--For the purpose of this proviso, "landed cost" means the cost of import of formulation inclusive of customs duty and clearing charges.

The relevant provision in DCPO 1987, i.e. Para 10, significantly, provided that retail cost had to be calculated in the following manner:

"R.P. = (M.C. + C.C. + P.M. + P.C.) x (1 + M.U./100) + E.D.

"R.P." means retail price.

"M.C." means material cost and includes the cost of drugs and other pharmaceutical aids used including overages, if any, and process loss there on 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.

"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 para 11.

"E.D." means excise duty a.

26. Undeniably, DCPO-95 has been framed under the Essential Commodities Act, and an interpretation of its provisions has to be in consonance with settled deference that courts attach to expert or regulatory exercises in price and cost fixing. Cyanamide is an authority on the point that such cost fixation is essentially legislative, evident from the following extracts:

A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligations of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application, the prospectiveness of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity.

And again, later:

Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character.

The above formulation of law was approved in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, by a Bench of five judges. This Court is plainly bound by that declaration of law. The petitioner''s claim that the impugned orders are illegal for non-consideration of individual factors, through pre-fixation, industry specific enquiry, is held unfeasible and unfounded.

27. The next contention and a substantial one-pertains to the obligation of the Central Government to furnish relevant or necessary information, enabling an aggrieved manufacturer to prefer a review of the cost fixed by it. Review, of the cost fixation was described by the Supreme Court, in Cyanamid, as a review of subordinate legislative exercise, at individual request, akin to a post decisional hearing, even while the court desisted from "pigeon holing" the procedure. It was held that:

Notwithstanding that the price fixation is a legislative activity, the subordinate legislation has taken care here to provide for a review. The review provided by

paragraph 27 of the Order is akin to a post-decisional hearing which is sometimes afforded after the making of some administrative orders, but not truly so.

28. It is a curious amalgam of a hearing which occasionally precedes a subordinate legislative activity such as the fixing of municipal rates etc. that we mentioned earlier and post-decision hearing after the making of an administrative or quasi-judicial order. It is a hearing which follows a subordinate legislative activity intended to provide an opportunity to affected persons such as the manufacturers, the industry and the consumer public to bring to the notice of the subordinate legislating body the difficulties or problems experienced or likely to be experienced by them consequent on the price fixation, whereupon the government cannot be confined to the individual manufacturer seeking review but must necessarily affect all manufacturers of the bulk drug as well as the consumer public. Since the maximum price of a bulk drug is required by paragraph 3 to be notified any fresh decision taken in the, Proceeding for review by way of modification of the maximum price has to be made by a fresh notification fixing the new maximum price of the bulk drug. In order words, the review it is fruitful must result in fresh subordinate legislative activity. The true nature of the review provided by paragraph 27 insofar as it relates to the fixation of maximum price of bulk drugs under paragraph 3 and leader price and prices of formulations under paragraphs 12 and 13 is hard to define. It is difficult to give it a label and to fit it into a pigeon hole, legislative, administrative or quasi-judicial. From the scheme of the Control Order and the context and content of paragraph 27, the review insofar as it concerns the orders under paragraphs 3, 12 and 13 appears to be in the nature of a legislative review of legislation, or more precisely a review of subordinate legislation by a subordinate legislating body at the instance of an aggrieved person. Once we have ascertained the nature and character of the review, the further question regarding the scope and extent of the review is not very difficult to answer. The reviewing authority has the fullest freedom and discretion to prescribe its own procedure and consider the matter brought before it so long as it does not travel beyond the parameters prescribed by paragraph 3 in the case of a review against an order under paragraph 3 and the respective other paragraphs in the case of other orders. But whatever procedure is adopted, it must be a procedure tuned to the situation. Manufactures of any bulk drug are either one or a few in number and generally they may be presumed to be well informed persons, well able to take care of them selves, who have the assistance of accountants, advocates and experts to advise and espouse their cause. In the context of the drug industry with which we are concerned and in regard to which to Control Order is made we must proceed on the basis that the manufacturers of bulk drugs are generally person who know all that is to be known about the price fixed by the government. From the legislative nature of the activity of the government, it is clear that the government is under no obligation to make any disclosure of any information received and considered any it in making the Order but in order to render

effective the right to seek a review given to an aggrieved person we think that the government, if so requested by the aggrieved person we think that the government, if so requested by the aggrieved manufacture is under an obligation to disclose any relevant information which may reasonably be disclosed pertaining to ''the average cost of production of the bulk drug manufactured by an efficient manufacturer'' and ''the reasonable return one net worth; For example, the manufacturer may require the government to give information regarding the particulars detailed in Form No. 1 of the Fourth Schedule which have been taken into account and those which have been excluded. The manufacturer may also require to be informed the elements which were taken into account and those which were excluded in assessing the ''free reserves'' entering into the calculation of net worth; These particulars which he may seek from the government are mentioned by us only by way of illustration. He may seek any other relevant information which the government shall not unreasonably deny. That we think is the nature and scope of the review contemplated by paragraph 27 in relation to orders made under paragraphs 3, 12 and 13.

29. On the question of the scope of a review, the learned Counsel for the respondents invited our attention to Vrajlal Manilal and Co. Vs. Union of India (UOI) and Another, Shivji Nathubhai Vs. Union of India (UOI) and Others, Swadeshi Cotton Mills Vs. Union of India (UOI), , Swadeshi Cotton Mills Vs. Union of India (UOI), and Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, . We are afraid none of these cases is of any assistance to the correspondence since the court was not concerned in any of those cases with a review of subordinate legislation by the subordinate legislating body.

(emphasis supplied)

29. Thus, the petitioner is right when it contends that the right of review has to be meaningful and not ritualistic. It had, in this case, undeniably sought for or elicited particulars; when the Central Government did furnish those details, the petitioner reiterated that the "break up" furnished was not informative. In that complaint, the petitioner appears to have a justifiable grievance. The Government''s letter dated 17th October, 1997, written to the petitioner no doubt furnishes some figures about Manufacturing cost, packing cost, conversion cost and packing material. Yet, they can hardly be termed informative. The disclosure of the "break up" does not reflect why the Central Government found that the figures--(as detailed working of each component, and sub-category, revealed by the petitioner''s letter of 1989: on which the respondent based its conclusions) of the petitioner was unacceptable, or how the figures indicated by it were correct. Though there is no obligation to indicate reasons in a process like the present one, as the primary exercise is legislative (Cyanamid, supra) yet, the valuable right of review has to be seen as a corrective, to attune the Government to individual features of manufacturers. This right as held by the Supreme Court, can be effectuated also where the manufacturer asks relevant information. The

court in their judgment, deliberately did not attempt listing out all potential factors and only illustrated the kind of information which could be sought by the manufacturer.

30. The fact that the Central Government "fixed" or "determined" various cost elements (e.g. material cost, conversion cost, packing charges, packing material cost, etc) are objective realities. Yet, mere enumeration of such objective realities and later claiming their disclosure, in the opinion of the court would not be compliance with the standards spelt out in Cyanamid. It has been held that reasons links between the decision and the mind of its maker. Thus, if the decision (Ref. Breen v. Amalgamated Engineering Union (1971) 1 All ER 1148 and Rajendra Construction Co. v. Maharastra Housing and Area Development Authority 2005 (2) Arb. LR. 637 (SC)

reveals the inscrutable face of the sphinx, it can by its silence render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.

If such reasons exist, not disclosing the why of such input wise cost analysis, and withholding it robs the party concerned--who can seek review of any meaningful choice in exercising it, and seeking the remedy. Review then, is reduced to an idle formality, ritualistically allowed, but incapable of providing any relief, even in limited class of cases. That is what has exactly happened here. The obligation to provide this is underlined by the fact that there is substantial difference between DCPO 1987 and DCPO 1995; the component or input costs in the previous regime could be arrived at, through investigation into the four defined factors, on the basis of discretion ("may"); DCPO 1995 limits discretion, in regard to input examination and obliges the Central Government to follow a defined procedure ("shall be fixed"). The respondents, in the written submissions, have adverted to subsequent orders made against one M/s. N.R. Jet and the petitioner, in 2003, and original proceedings. They advert to criminal proceedings and a writ petition filed in Bombay High Court. But, these facts have not been urged; nor have the respondents objected to maintainability of this petition on that ground.

31. For the above reasons, it is held that the impugned order, rejecting the petitioners'' review application, cannot be sustained. It is accordingly quashed. The Central Government shall furnish all the details of the methodology adopted by it while arriving at the input costs, indicated in its letter of 17th October 1997 to the petitioner within a month; the petitioner shall prefer a review petition within two weeks thereafter. The Central Government shall decide the said application within two months after receiving the review application, in accordance with law, and communicate the said decision directly to the petitioner. As far as the second impugned order--dated 1-11-2001 is concerned, the amount deposited by the petitioner with the Central Government shall be retained by the latter till its decision in furtherance to these directions; it shall pass fresh orders in respect of that issue, in the light of the order in the review application.

32. The writ petition is allowed in terms of the above directions. In the circumstances of this case, there shall be no order as to costs. Order Dasti to the parties.

