
(2014) 08 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

Novartis India Limited

APPELLANT

Vs

J. Anto

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : 2014 3 CPJ 661

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition allowed

Judgement

1. MR . Justice J.M. Malik, Presiding Member - -The main question is, "whether the opposite party -Novartis India Limited can sell the medicine below the M.R.P.? Is it unfair trade practice? Whether it is a policy of pick and choose and if it is so, what is its effect? The opposite party -Novartis India Limited has lost the case before both the Fora below. Aggrieved by the order of the State Commission, he has filed the present Revision Petition. The complainant J. Anto's son Tomes Anto, aged about 17 years, underwent surgery for brain tumour. He remained sick for a considerable period. Thereafter, Tomes started growing taller and taller due to excess production of growth hormone. They consulted Dr. Nihal Thomas, Professor, Department of Endocrinology, Christian Medical College, Vellore, who prescribed a medicine named as octreotide LAR 20 mg. This was to be given on monthly basis. Its price was Rs. 58,000. The treatment was started on 30.4.2008. It did not give the desired result. But the opposite party No. 2 suggested to continue it.

2. IN the meantime, the patient was examined by Dr. Mathew John of Kerala Institute of Medical Sciences, Thiruvananthapuram. The petitioner -Novatris India Limited supplied the same at the maximum discount upto 50% amounting to Rs. 29,000 per month. Ultimately, the said medicine was stopped. The complainant had to purchase eight injections amounting to Rs. 3,60,008. It was submitted that had discount been given for the earlier purchase, the complainant could have saved Rs. 1,17,872. The complainant asked for refund of the said amount. Both the Fora gave the concurrent finding and his claim was allowed. The case of

the petitioner is that at the request of Dr. Mathew John, the OP -1 enrolled the patient with the newly launched STAR Sandostatin Lar Cares designed to benefits the patient of acromegaly. Thereafter, the petitioner supplied the medicine to the patient on discount. We have heard the Counsel for the parties. Learned Counsel for the petitioner has invited our attention towards a few documents. He has invited our attention towards letter dated 13.8.2008 issued by the petitioner. The entire letter runs as follows: "To

All Oncology C & Fs

Copy to: J. Malhotra, S. Swaminathan, A.Sawant, P. Malgaonkar, RajeshP. Haldipur, N. Joyce D

All Oncology TBEs

Date 13.8.2008

Concerning Price discount - -Sandostatin LAR through STAR programme.

We take pleasure in sharing the launch of a new "STAR -SANDOSTATIN LAR CARES", a person designed to benefit patients of acromegaly.

The consultants will be enrolling their patients into this programme with the help of a STAR enrolment form - -a sample copy of the same has been enclosed.

Once the patient submits the prescription and the completed STAR enrolment form, signed by the doctor, they will be eligible for the following benefits.

Sandostatin 0.1. mg - -21 ampoules free 30% price discount on 1st vial of Sandostatin LAR.

2nd vial of Sandostatin LAR at a 40% discount.

The 3rd, 4th, 5th, 6th vials of Sandostatin LAR at a 50% discount.

This discount option is available only for patients who are submitting the completed STAR enrolment form only.

You will be sent a STAR enrolment passbook for handing over to patients to maintain the purchase records.

STAR enrolment forms brought by the patients need to be attached to the first invoice and retained by you for records.

Please feel free to contact us for any clarifications."

3. COUNSEL for the petitioner has also invited our attention towards the list of medicines purchased by the complainant, which is reproduced as follows:

4. IT is explained that as per the previous letter, the rates were reduced after 13.8.2008. We have perused the written statement filed by the OP -1 before the State Commission. The Counsel for the complainant submitted that there is no mention of letter dated 13th August, 2008 in the written statement filed by the

Opposite Party. The mention of that letter is conspicuously missing. The possibilities of its manipulation cannot be ruled out but it has no bearing on the merits of this case. However, it must be borne in mind that the petitioner gave the subsequent injections at the concessional rate and that concessional rate is below the M.R.P. Consequently, by no stretch of imagination, it is said to be an unfair trade practice. There lies no impediment in giving the medicine on below rate than the M.R.P. There also lies no rub if the OP gives the medicine free of cost. The Law has got crystalline clarity. Nobody can charge the amount more than M.R.P., but it can be sold at the lower rate than the M.R.P.

5. THE last submission made by the Counsel for the petitioner was that they otherwise do not pick up a conflict with paying of the decretal amount which already stands paid and would not compel the complainant to refund the money. It was also pointed out that patient has already died and the OP is not in a mood to recover the said amount.

6. WITH these observations, we hereby accept the Revision Petition, set aside the orders of the Fora below and dismiss the complaint. However, it must be borne in mind that the M.R.P. fixed by the Ministry of Health or Ministry of Commerce or any other Ministry, is on the higher side. The OP has earned more than 100% of the profit. Steps should be taken to re -fix the M.R.P., so that the consumers should not suffer. Giving so much profit to the companies, who make such like medicines, is against the principles of ethics and morality. Copy of this order be sent to the Ministry of Health for its notice.