(2026) 08 BOM CK 3605

In the Bombay High Court

Case No : WRIT PETITION NO. 157 OF 2023

Okasa Pharma Pvt. Ltd. APPELLANT

Vs

National Pharmaceutical Pricing Authority & Ors. RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:
Essential Commodities Act, 1955
Drugs (Price Control) Order, 1995
Constitution of India — Article 226

Citation : (2026) 08 BOM CK 3605

Hon'ble Judges : Manjusha Deshpande, J;Bharati Dangre, J

Bench : Division Bench

Advocate : Mr. Ashish Kamat, Senior Advocate a/w. Mr. Akash Rebello, Mr. Vaibhav Singh, Mr. Manas Kotak, Mr. Dhruv Dandekar and Ms. Sneha Nair i/b. M/s. Veritas Legal, Dr. G.R. Sharma a/w. Mr. Ashutosh Misra, Mr. Manish Upadhye

Final Decision : Allowed

Judgement

1. The Petitioner in the instant Writ Petition is seeking directions to quash and set aside the impugned Demand Notice dated 16thMay, 2014, issued by the Respondent No.1, whereby the Respondent No.1 wrongfully and illegally demanded a sum of Rs.2,39,74,181/- form the Petitioner towards the purported overcharged amount together with interest thereon, on sale of the product, namely, 'Cefadur 500 Tablet' comprising of the Scheduled Formulation 'Cefadroxil of 500 mg in each tablet', for the purported period between April 2008 to January 2014. The Petitioner also raises a challenge to a further letter dated 27thAugust, 2014, issued by Respondent No.1 inter alia demanding an amount of Rs. 3,52,63,014/-.

2. When the Petition was listed before this Court on 21stJanuary, 2026, we had expressed our doubt about entertaining the Petition on account of the delay in challenging the Demand Notice issued in 2014. However, upon Petitioner filing of an additional affidavit by the Petitioner in an attempt to satisfy this Court about

the delay caused and demonstrating that in fact the cause of action is a continuing one, and being satisfied with the explanation, we have condoned the delay and the Respondents have been directed to file its reply affidavit to decide the matter on merits.

Respondent Nos. 1 and 2 have filed reply affidavit and the pleadings are complete. The learned Senior Advocate Mr. Ashish Kamat, appearing for the Petitioner submits that the Petitioner is engaged in manufacturing a Formulation named 'Cefadur 500 Tablet' containing scheduled formulation 'Cefadroxil of 500 mg in each tablet'. The Respondent No.1 has issued standing order being S.O. 663(E) under paragraphs 9(1) and (2) and 11 of Drugs (Prices Control) Order, 1995 ("DPCO 1995"), by fixing the ceiling price of the said Formulation at Rs.12.52 for 4 strip/blister. The said standing order was subsequently superseded by standing order 1960(E) under paragraphs 9(1) and (2) and 11 of the DPCO 1995 for fixing the ceiling price at Rs.34.04. According to the learned Senior Advocate, the Petitioner complies with the said SO 1960(E) and revised the price of the said product is fixed accordingly.

3. It is submitted that, the Respondent No.1 addressed a letter dated 12thMay, 2011 to the Petitioner alleging that the Petitioner had overcharged price above the price notified under SO 663(E). The Respondent No.1 called upon the Petitioner to furnish details in relation to the said product, duly certified by the Chartered Accountant. The Petitioner responded to the said letter vide its letter dated 13th June, 2011. Thereafter, another letter was issued on 26thJuly, 2013, which was responded by the Petitioner on 12thAugust, 2013, stating that the product of the Petitioner was covered under said SO 1960 (E), which is in compliance with the price as notified in SO 1960(E). The learned senior advocate submits that the Respondent No.1 thereafter has issued a show-cause notice to the Petitioner alleging that the price fixed in SO 1960(E) was for plain/dispersible tablet, which was different from the film-coated tablet, as clearly mentioned in SO 663(E), which superseded the earlier notification insofar as it relates to formulation packs mentioned therein. According to the Respondent No.1, the ceiling price of said Formulation was not included in SO 1960(E) hence, the question of supersession of said SO 663(E) in respect of the said Formulation did not arise. Hence, the Petitioner was obligated to follow the price notified under SO 663(E) dated 24thMarch, 2008 for the said product. It was further alleged that Petitioner had purportedly overcharged an amount of Rs. 1,94,76,247- during the period from April 2008 to January 2014 from consumers in respect of the said Formulation. The Petitioner was in receipt of a reminder containing a similar statement, inter-alia, calling upon the Petitioner to deposit purported overcharged amount of Rs. 3,61,69,435/- vide reminder dated 27thAugust, 2014. It is submitted that the Petitioner never received the show-cause notice issued on 24th March,2014.

4. It is submitted that the purported demand notice did not refer to any of the Petitioner's earlier letters addressed to the Respondents, wherein the Petitioner

had explained that it has complied with SO 1960(E), which was issued in supersession of SO 663(E). According to the Petitioner, since the Petitioner did not receive the demand notice, there was no question of any default. According to learned Senior Advocate for the Petitioner, the impugned notice seeks to recover purported overcharged amounts on the basis of MRP of the Rs. 36.95 of the said product by which the retailers were selling it to the consumer, when in fact the Petitioner was selling the said product at the price of Rs.23.71 to dealers, which was below the notified ceiling price. Hence, the Petitioner has not overcharged any amount, as alleged by the Respondent No.1.

The Petitioner responded to the reminder issued by the Respondent No.1, stating that the Petitioner has never received the demand notice dated 16thMay, 2014, and the Petitioner has been complying with the OS 1960 (E), which was issued in supersession of SO 663(E). Even though the Petitioner responded to the reminder, the aforesaid demand notice has not been withdrawn. Mr. Kamat submits that pursuant to the reply submitted by the Petitioner on 8thSeptember, 2014, the Respondent No.1 has not issued any further communication they have neither issued any clarification, nor passed any adjudicatory order for recovery pursuant to the impugned demand notice. In view of the complete absence of any further action on the part of the Respondent No.1, the Petitioner was under a bonafide belief that its explanation had been accepted. However, after a long slumber of more than six years, the Petitioner received a reminder dated 31st August, 2021, enclosing a demand notice dated 22ndApril, 2015 reiterating the allegation of overcharges and threatening recovery of the purported overcharged amount as arrears of land revenue. It is submitted that, in fact, the Petitioner has discontinued the production of the said product. Notwithstanding the lapse of several years, the demands have been reiterated by the Respondent No.1 threatening to take coercive action by invoking the provisions of the Essential Commodities Act, 1955. The Petitioner responded to the said letter dated 31st August, 2021, vide its communication dated 27thSeptember, 2021, denying receipt of the earlier notices in relation to the 'Cefadur Rediuse Drops' and sought time to verify and collect the records pertaining to the alleged recovery, which related back to a period extending over more than a decade ago. Notwithstanding the response of the Petitioner, a further reminder was issued by the Respondent No.1 on 10thNovember, 2021, which was again responded to by the Petitioner vide its letter dated 8thDecember, 2021, with a request to withdraw the demand notice dated 22nd April, 2015 and the reminders dated 31 st August, 2021 and 10th November, 2021.

In view of the repeated demand notices issued by the Respondents, the Petitioner is constrained to approach this Court.

5. It is submitted that in fact the Respondent No.1 had issued a show cause notice to the Petitioners alleging overpricing of the product and non-compliance with SO 663(E), calling upon the Petitioner to show cause why an overcharged amount of Rs. 1,94,76,347/- should not be recovered. It is submitted that after

issuing the said show cause notice, there is no order adjudicating upon the issue by the Respondent No.1, and a Demand Notice has been issued straightway alleging that the Petitioner has overcharged in respect of the product. It is, therefore, submitted that the show cause notice issued by the Respondent No.1 has not been taken to its logical conclusion by adjudicating upon the subject matter of the show cause notice, which according to the Petitioner is not sustainable in law. It is submitted that the Petitioner was required to be given an opportunity of hearing before passing any order which has not been granted to the Petitioner and the impugned demand notices have been issued directly without there being any adjudication upon the subject matter of the show cause notice. It is, therefore, submitted that in view of the fact that the impugned demand notices were never received by the Petitioner and the Petitioner was never afforded any opportunity of being heard or granted a personal hearing, such demand notices are required to be quashed and set aside.

6. The learned Senior Advocate appearing for the Petitioner has drawn our attention to the order passed by this Court in Writ Petition No. 320 of 2022 decided on 9thAugust, 2024, wherein a similar Writ Petition challenging the Demand Notice issued to the Petitioner was considered, wherein no opportunity was given to the Petitioner to respond to the show cause notice. This Hon'ble Court quashed and set aside the Demand Notices and remanded the matter back to the Respondent No.1 for de novo consideration, further directing the Respondent No.1 to adjudicate upon the show cause notice by passing an order after affording an opportunity of hearing to the Petitioner, and to decide the same on its own merits within stipulated period. It is submitted that the Petitioner's case is also similarly situated; hence, the Demand Notice in the present case also deserves to be quashed and set aside.

7. Per contra, the learned Advocate, Dr. G.R. Sharma appearing for the Respondents, has opposed the prayers of the Petitioner, contending that the Writ Petition itself is not maintainable since the Petitioner, if aggrieved by the demand notice, has a remedy of filing a review. It is submitted that the stand of the Petitioner that it has not received the demand notice dated 16thMay, 2014, but has received the reminder in relation to Demand Notice dated 27thAugust,
2014, is totally false. The Petitioner was very much aware of the proceedings and the contents of the reminder dated 27thAugust, 2014, merely reiterated the contents of the demand notice dated 16thMay, 2014. So far as the price of the 'Cefadur 500 Tablet' is concerned, according to him, SO 663(E) dated 24th
March, 2008 fixed the ceiling price for the Formulation described as 'each film coated tablet contains Cefadroxil 500 mg' with a pack size of 4's strip/blister, and the notified price applied to the said formulation and pack. While revising the price vide SO 1960(E) dated 6thAugust, 2008, the statement of change in prices was released which showed that the existing prices of Rs.33.10 is revised to Rs.34.04. The price of Rs.33.10 was notified vide SO 443(E) dated 30thMarch,
2005, which related to plain/dispersible tablets. Whereas, the Petitioner's Formulation is 'Cefadroxil 500 mg film-coated tablet, therefore, the supersession

under SO 1960(E) dated 6thAugust, 2008, does not extend to the Formulation and pack referred by the Petitioner, as a result the ceiling price notified under SO 663(E) dated 24thMarch, 2008, continued to apply to the Petitioner's product for relevant period.

8. The learned Advocate, has further submitted on the merits of the matter with respect to the revision in price of the drugs pointed out by the Respondent No.1 and its validity. According to the Respondent, the ceiling price notified under SO 663(E) dated 24thMarch, 2008, was applicable to the Petitioner, and Petitioner was under an obligation to adhere to the same. It is submitted that the impugned demand notice dated 16th May, 2014 and reminder dated 27th August, 2014 are legal, valid and issued strictly in accordance with the provisions of the Drugs (Price Control) Order, 1995 and Essential Commodities Act, 1955. The relevant notices are issued on the basis of the material available with the Respondent in exercise of its statutory powers. Since the demand notice dated 16 thMay, 2014, was duly issued to the Petitioner, the Petitioner has failed to make out any case for interference by this Court under Article 226 of the Constitution of India. Hence, it is submitted that the Writ Petition deserves to be dismissed.

9. We have heard the parties at length, although various questions have been raised on the merits of the show cause notice as well as the demand notice issued by the Respondent No.1, in our view at this stage without going into the merits of the subject matter of the demand notices, what needs to be decided is whether the show cause notice issued dated 24thMarch, 2014, by the Respondent No.1, was adjudicated upon before issuance of impugned demand notice dated 16thMay, 2014. After hearing the respective parties, we do not find that, either of the parties has been able to place on record any document showing the adjudication of the show cause notice dated 24thMarch, 2014, issued by the Respondent No.1. Similarly, it also needs to be appreciated that according to the Petitioner, the said show cause notice has not been received by the Petitioner and only the reminder dated 27thAugust, 2014 appears to have been received by the Petitioner. Admittedly, the Petitioner has not submitted any response to the said show cause notice. It is submitted that the Petitioner has informed the Respondents that it would be relying on the earlier communication addressed to the Respondent No.1, wherein the Petitioners had already taken a stand about the alleged overpricing in response to the communication issued by the Respondent No.1. The Respondent No.1 has not placed on record any order or communication adjudicating upon the show cause notice dated 24thMarch, 2014. Thus, it is evident that, without any adjudication upon the show cause notice dated 24thMarch, 2014, the Respondents have straightway issued the demand notice dated 16thMay, 2014. The learned Advocate for the Respondent relied on the decision of this Court in the case of Indian Drugs Manufactures Association and Ors. Vs. Union of India and Ors. in Writ Petition No. 2368 of 1996 dated 22ndDecember, 2011. Similarly, it is an admitted position that no opportunity appears to be given to the Petitioner to respond to the show cause notice. Thus, in our view, in the absence of adjudication upon the subject matter

of the show cause notice, a Demand Notice cannot be issued.

10. In an identical Writ Petition involving similar issue, this Court has set aside the impugned ‘Demand Notices’, by remanding the matter back to the Respondent No.1 with a direction to grant an opportunity to respond to the show cause notice, and thereafter pass appropriate orders. In our view, similar order deserves to be passed in the present Writ Petition, by setting aside the demand notice dated 16th May, 2014, and reminder dated 27thAugust, 2014. In the result, the Writ Petition is allowed in the following terms:

(i) The demand notice dated 16th May, 2014 and reminder dated 27thAugust, 2014, are hereby quashed and set aside;

(ii) The Respondent No.1 is directed to decide the matter afresh by granting an opportunity to the Petitioner to file its reply to the show cause notice within a period of four weeks from the date of receipt of this order and taking into consideration the decision in the case of Indian Drugs Manufactures Association and Ors. Vs. Union of India and Ors., relied by the Respondents;

(iii) The show cause notice issued by the Respondent No.1 dated 24thMarch, 2024 shall be decided by passing an appropriate order on its own merits after granting an opportunity of hearing to the Petitioner;

11. Needless to state that we have not gone into the merits of the matter, and all the rights and contentions of the parties are kept open.