

IN THE HIGH COURT OF SINDH, AT KARACHI**Present:- Mr. Justice Faisal Arab, CJ &
Mr. Justice Zafar Ahmed Rajput**

C.P. No.D-758 of 2013

Javed Iqbal & another. Petitioner

Versus

Federation of Pakistan & 2 others. ... Respondents

Syed Haider Imam Rizvi a/w Mr. Farhatullah, Advocates for the
Petitioners.

Mr. Haider Ali Khan, Advocate for the Respondent No.3.

Mr. Mustafa Mahesar, AAG.

Dr. Saifur Rehman Khattak, Deputy Drugs Controller.

Date of short order : 30.04.2015

Date of reasons : ____ .10.2015

<><><><><>**ORDER**

Faisal Arab, CJ:- The case of the petitioners is that they are social workers involved in the activities of setting up free medical camps in slump areas of the country. The respondent No.3 is a multinational pharmaceutical company. One of its manufactured drugs is “Pegasys”, which is used in the treatment of Hepatitis B and C. It is also the case of the petitioners that initially this drug was being sold by the respondent No.3 at a retail price of Rs.13,000/-. However, when number of other pharmaceutical companies market similar drug at considerable low price, which affect the sale of the respondent No.3’s drug Pegasys, the respondent No.3 in order to secure the market share of its product Pegasys has come up with a plan named “Patient Access Program” (PAP) whereby any one purchase one Pegasys injection get one injection free, which according to the petitioners benefit the doctors and the retailers but not to the patients and that too in this manner about 60% discount

is given as against maximum of 40% discount in terms of SRO 1103(1)/2006 dated 31.10.2006. It is claimed that the said drug is being sold in the market in a combo pack of two with the label "buy one get one free" and the respondent No.2, which is a Drug Regulatory Agency of Pakistan, inspite of the fact that it has also written letters to the respondent No.3 to comply with the provisions of law has remained inactive.

2. The case of the respondent No.3, on the other hand, is that on 21.09.2002 the Ministry of Health registered its drug Pegasys by fixing its maximum retail price at Rs.13,000/- per vial and the respondent No.3 then took initiative and launched Patient Access Program for the eradication of Hepatitis and on its own accord decided that anyone purchase Pegasys injection at a price of Rs.13,000/- would get one free of costs. It is admitted in parawise comments of respondent No.3 that the Ministry of Health gave direction to discontinue Patient Access Program as it intend to give discount beyond 40%. It is the case of the respondent No.3 that the Ministry of Health or the Drug Regulatory Agency of Pakistan have no authority to interfere with the Patient Access Program of respondent No.3 through which the Pegasys injection is marketed in a combo back of two for the price of one and instead sell the drug at the half price.

3. The respondents No.1 and 2 jointly filed parawise comments, wherein it is mentioned that at the time of registration, the price of Pegasys injection was fixed at Rs.13,000/- per vial, which was subsequently reduced to Rs.6,500/- per vial vide SRO No.863(I)2012 dated 13.07.2012. It is also stated in the parawise comments that the low price brands of the similar drug are available in the market. It is also stated that the Ministry of Health did not agree to the proposal of Patient Access Program introduced by the respondent No.3 as it was violative of SRO 1103(I)/2006 dated 31.10.2006, which allows maximum of 40% discount and, therefore, the respondent No.3 was asked instead of selling two vials of Pegasys injection for Rs.13,000/-, it should sell each vial at a price of Rs.6,500/- each in order to ensure that the benefit of reduce price is transferred to patients directly.

4. From the above pleadings of the parties, it is evident that the respondent No.3 is selling its Pegasys injection in a combo pack of two vials at the price of Rs.13,000/- and this by itself violate discount limit of 40%. In addition to this through Patient Access Program, there is every likelihood that benefit could not be passed on to the patients directly as the retailers may sell each vial at the price of Rs.13,000/- and pocketing difference between Rs.6,500/- and whatever price it would sold additionally. In Human Right Case No.2858 of 2007, the Hon'ble Supreme Court vide order dated 22.08.2008 has directed Drug Controller to take necessary steps for implementation of SRO 2006 and by not ensuring the implementation of SRO 1103(1)/2006 dated 31.10.2006, we are of the view that instead of selling Pegasys injection in a combo pack of two vials for Rs.13,000/-, the respondent No.3 shall sell it at the price of Rs.6,500/- per vial as fixed under the above SRO so that the benefit can be passed on to the patients directly.

5. Vide short order dated 30.04.2015 this petition was allowed and these are the reasons for the same.

Chief Justice

Judge