

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

High Court Appeal No.220 of 2019

Reckitt Benckiser Pakistan Limited
Versus
Pakistan & others

Date	Order with signature of Judge
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1. For hearing of main case.
2. For hearing of CMA 1755/19

Dated: 13.12.2023

Mr. Makhdoom Ali Khan along with M/s Sami-ur-Rehman, Shaheer Roshan and Fahad Khan for appellants.

Qazi Abdul Hameed Siddiqui, Deputy Attorney General.

Mr. S.M. Ghazanfar along with Mr. S. Jamil Ahmed for respondents/DRAP.

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Appellant in this appeal has impugned an order dated 29.04.2019 passed in Suit No.264 of 2016 wherein one of the products (Dettol) of the appellant was subjected to its maximum retail price cap by DRAP which was questioned in the suit. It is appellant's independent application which was filed/fixed before the DRAP authority which was not decided with a reasoned order. The appellant approached this Court subsequently challenging order and the vires of the rules i.e. Alternative Medicine and Health Products Enlistment Rules, 2014 framed under the DRAP Act, 2012 as purportedly it (the Rules) travelled beyond the frame of the Act itself.

Be that as it may, prior to the filing of the suit appellant has already surrendered itself before the DRAP authority and moved an application that the subject product/commodity does not come within the frame of fixing price by DRAP. As ill luck would have it, it was decided without proper reasoning and learned Judge who authored the

impugned order referred the matter back to the authority to decide the application with some reasoned order. The only anxiety of Mr. Makhdoom Ali Khan, learned counsel appearing for the appellant, is that while it may take some time and until they (DRAP) decides the application, since per learned counsel it is not within their domain as far as fixation of maximum price is concerned, they should not take any coercive action against the appellant and subject product.

Mr. S.M. Ghazanfar, learned counsel appearing for DRAP authorities, however concedes to the above to the extent of coercive action, provided the DRAP authority be assisted by the appellant to reach to a just, fair and proper conclusion. Order accordingly. DRAP authorities shall decide the application at the earliest, preferably in three months' time and till such time no coercive action be taken.

Insofar as suit itself is concerned, since vires have been challenged in the suit, learned Single Judge travelled beyond the mandate as the suit was disposed of on the day when the matter was fixed for framing of issues and no notice to appellant and its counsel was issued for its possible disposal at the stage of hearing of suit. Although date of framing of issues is a date of hearing of suit however since notice was not served for its disposal, interest of justice demands that the suit should not have been disposed of. Keeping the spirit of the injunctive part of the impugned order, which is partially modified above, part of order, which has disposed of the suit, is thus set aside and suit alone is restored and the suit is deemed to be pending for framing of issues only. Order accordingly.

Mr. Ghazanfar however further submits that notwithstanding the suit is remanded to ascertain the vires of the Rules, the said issue has already been set at rest in terms of judgment reported as PLD 2018

Sindh 448 and this (remand) is without prejudice to the rights of both the parties. Order accordingly.

In case the DRAP authorities decides the application against the appellant, learned counsel for the appellant submits they may be allowed to avail the remedy by way of an appeal and/or any other appropriate remedy available to them under the law and till such time, which in any case may not exceed seven days, the DRAP may not take coercive action, as conceded by Mr. Ghazanfar Advocate. Order accordingly.

Appeal stands disposed of in the above terms along with listed application.

Judge

Judge