

**(2015) 119 CLT 949 : (2015) 1 ILR 147 : (2014) 2 OLR 276**

**Orissa High Court**

**Case No:** W.P. (C) Nos. 23296 of 2012 and 626 of 2013

Orissa Campus  
Chemists Association

APPELLANT

Vs

State of Orissa

RESPONDENT

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**Date of Decision:** April 23, 2014

**Acts Referred:**

Constitution of India, 1950 – Article 14, 19, 21#Essential Commodities Act, 1955 – Section 3

**Citation:** (2015) 119 CLT 949 : (2015) 1 ILR 147 : (2014) 2 OLR 276

**Hon'ble Judges:** S.K. Mishra, J

**Bench:** Single Bench

**Final Decision:** Disposed Off

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### **Judgement**

S.K. Mishra, J.

In these two writ petitions, the petitioners being Orissa Campus Chemists Association and M/s. Oracle Drugs, M.K.C.G.

(MCH) Campus and others have assailed Clause 16 of the Resolution of the Government issued on 17.11.2012 by the Health and Family Welfare

Department of the Government of Orissa, whereby directions have been given that the allottees shall supply drugs at a discount price to the public

in a given percentage.

2. In the first writ petition, the petitioner is the Orissa Campus Chemists Association represented by its Joint Secretary has prayed the Court to

quash the Resolution dated 17.11.2012, in so far as it imposes for supply of drugs at discounted price being without any authority in law and

violative of Articles 14, 19 and 21 of the Constitution of India and in second writ petition M/s. Oracle Drugs, M.K.C.G. (MCH) Campus

represented through its Proprietor has filed the writ petition seeking quashing of the order dated 17.11.2012 under Annexure-4.

3. It is apparent from the records that in the year 2004, as per the Government of Orissa in Health and Family Welfare notification dated

28.01.2004, certain guidelines were issued for opening of 24 hours Day and Night Medicine shop within the premises of the Hospital Such a

guideline was issued in suppression of all previous circulars and orders the Government have passed earlier. It was directed that the allottee shall

be an unemployed registered pharmacist or a person who is willing to engage registered pharmacists and young persons who are just above the

maximum age limit admissible for Government employment and just below 45 years may be given preference over older persons. At clause 7, the

license fee structure has been given for renewal of existing medicine shop and fresh medicine shop within the campus of three medical college and

hospitals at Rs. 75,000/- per annum was fixed as the licence fee. Similarly, for the District Headquarters Hospital, the fee is Rs. 30,000/- per

annum The allottee has to construct their structure in the land provided by the Hospital It should be furnished and Air-conditioned and should be fit

for use as a Day and Night shop. There are also other conditions also to that allotment.

4. On 17.11.2012, the Government of Orissa in Health and Family Welfare Department issued another Resolution regarding revision of guidelines

for opening of 24 hours medicine shop inside the campus of Government Health Institutions Among other things, at Clause 16, the Government

have stipulated that the allottee shall supply drugs at a discounted price to the public as under:

The petitioners assail this provision of prescribing a discount for sale of medicine to the general public.

5. In course of hearing, the issues boiled down to two important aspects of the case. Firstly, it is stated that as per the previous guidelines, they

have entered into an agreement with the Government and lease has been granted to them and that lease period is valid for five years. So during the

subsistence of a contract an unilateral decision cannot be made by the Government changing the conditions of the contract and thereby asked the

petitioners to supply the medicines at a discounted rate.

6. The second aspect that arose in course of hearing is that the Central Government in Ministry of Chemicals and Fertilizers (Department of

Pharmaceuticals) on 15th May, 2013, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 and supersession

of the Drug (Prices Control) Order, 1995, made a new order At Clause 7, the Central Government has fixed the margin to the retailer at 16% at

the price of the retailer, in other words, the Central Government has issued guideline to the effect that while fixing a ceiling price of the scheduled

formulations and retail prices of new drugs 16% of price to retailer as a margin to retailer shall be allowed.

7. Emphasizing on this issue, learned counsel appearing for the parties emphatically argued that the State Government does not have the powers to

control the price of the drugs. Accordingly, this Court has directed the learned Standing Counsel to file an affidavit on these two aspects of the

case Today, an affidavit has been filed by the officer on Special Duty, Health and Family Welfare Department In the said affidavit, the deponent,

inter alia, has stated that the prices in respect of 392 items of drugs included in the schedule to the Drugs (Prices Control) Order, 2013 is fixed by

the Government of India. However, in respect of remaining drugs available in the market, the prices are fixed by the manufacturers themselves.

Under the provisions of Drugs Price Control Order, 2013, 16% profit margin is allowed to the retailers in respect of the scheduled drugs and in

respect of the remaining drugs, there is no limit of profit margin. The State Government has admitted that it has no role to play in price fixation of

the drugs. As such no norms of Essential Commodities Act or Drugs (Prices Control) Order, 2013 has been violated by the Government

stipulating 15% discount on MRP to the customers by the shop owners.

8. As regards the first point is concerned, it is stated by the opposite party that on the modification/alteration of conditions embodied in the

agreement, the Government have only issued a guideline revising the earlier guideline directing therein for allowing discount to the customers by the

shop owners which is the discretion of the Government in the interest of the public. It is further reiterated that it is the Government of India who

have the power to fix up the prices of the scheduled drugs under Drugs (Prices Control) Order, 2013 The price fixed by the Government of India

is binding for all retail medicine shops. The State Government have only directed the Medicine shops operating 24 hours within the campuses of

Government Health Institutions to extend 15 discount to the public.

9. In course of hearing, Mr. Jayant Das, learned Senior Advocate has also stated that as far as the shops operating in the private partnership basis,

this discount is not applicable and therefore, it is violative of Article 14 of the Constitution of India. It is further borne out that the retailers have to

pay VAT on the maximum retail price and not on the discounted price.

10. Section 3 of the Essential Commodities Act, 1945 provides for powers to control production, supply, and distribution etc of essential

commodities Sub-section (1) provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or

increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential

commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the

production, supply and distribution thereof and trade and commerce therein Sub-section (2) provides that without prejudice to the generality of the

powers conferred by Sub-section (1) an order made thereunder may provide at clause (c) that for controlling the price at which any essential

commodity may be brought or sold Sub-section (2)(a) of the Act provides for essential commodities declaration etc Sub-section (1) provides that

for the purpose of the Act, the essential commodities means the commodities specified under the schedule Examination of the schedule appended

to the Act reveals drugs is the first item which has been mentioned as an essential commodity. Thus, the prices of any drugs can only be controlled

by the Central Government and it is the occupied field of the Central Government. The State does not have any jurisdiction to fix the prices of the

commodities. The learned Standing Counsel has submitted that the Central Government by virtue of the impugned notification has not fixed the

price of the commodities, rather it has asked for grant of discounts to certain kinds of shops operating inside the campus of the Hospitals and

Medical Colleges etc. However, keeping in view the principles that guide the essential commodities, this Court is of the opinion that giving orders

to allow discount to the customers by certain types of medicines shops is also an effective steps in regulating the prices of the essential commodities

i.e. the drugs.

In that view of the matter, this Court is of the opinion that Clause 16 of the impugned notification is without jurisdiction and, therefore, the same is

quashed. The rest part of the Notification is left undisturbed.

With the above observation, both the writ petitions are disposed of.