

(2011) 12 CAL CK 0092

Calcutta High Court

Case No: Writ Petition No. 20832 (W) of 2011

Wockhardt Limited and Another

APPELLANT

Vs

Senior Chief Medical Officer and
Others

RESPONDENT

Date of Decision: Dec. 20, 2011

Acts Referred:

- Drugs and Cosmetics Act, 1940 - Section 18A, 25(3)

Citation: (2012) 2 CALLT 211 : (2012) 4 CHN 432 : (2013) 1 WBLR 792

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Sakti Nath Mukherjee, Mr. P.K. Das, Mr. Debdatta Sen, Mr. Soumik Mukherjee, Mr. R.N. Jhunjhunwala, Mr. J.B. Panda and Mr. Somnath Bose, for the Appellant; Somnath Bose Mr. Utpal Bose for the UOI in W.P. No. 20832(W) of 2011, Mr. Ramendra Nath Bag, for the first and sixth respondents in W.P. No. 21962(W) of 2011, for the Respondent

Judgement

Hon"ble Mr. Justice Jayanta Kumar Biswas

1. The petitioners in W.P. No. 20832(W) of 2011 under art. 226 dated November 29, 2011 are also the petitioners in W.P. No. 21962(W) of 2011 under art. 226 dated December 14, 2001.
2. While in WP 20832 the petitioners have questioned a show cause notice dated October 3, 2010 issued by the Sr. Chief Medical Officer (SAG), I/C, Govt. Medical Store Depot, Kolkata-22 and the things stated in a letter of the Drugs Inspector, CDSCO, East Zone, Kolkata dated October 24, 2011, in WP 21692 they have questioned a show cause notice dated November 21, 2011 issued by the State Drugs Controller, Licensing Authority-cum-Controlling Authority, Himachal Pradesh.
3. With WP 21692 the petitioners have produced a copy of a letter of the Drugs Inspector, CDSCO, East Zone, Kolkata dated November 21, 2011, relevant parts whereof are quoted below:

Now, a original copy of test report issued by Govt. Analyst, CDL, Kolkata and a sealed portion of the sample of the subject are being sent to you u/s 25(3) of Drugs & Cosmetics Act 1940 for your comments.

You are also requested to send the details of records of manufacturing, testing and sale/distribution of the subject drug alongwith your comments within 28 days from the date of dispatch of this letter to the undersigned.

4. It is evident from the documents produced with the petitions and the affidavit filed by the Inspector in compliance with the order dated December 13,2011 in WP 20832 that everything started from a test report on sample of one Zedex Cough Syrup manufactured by the first petitioner. In the letters issued by the Inspector it was mentioned that the Government Analyst, CDL, Kolkata had declared the drug as " Not of Standard Quality."

5. It is evident from the show cause notice dated October 3,2011 that the proceedings for black listing the first petitioner were initiated by the Directorate General of Health Services of the Ministry of Health & Family Welfare of the Government of India on the basis of the test report, a copy whereof was forwarded to the directorate by the Inspector who issued the letter dated October 24,2011.

6. It is evident from the show cause notice dated November 21,2011 that proceedings for cancellation of the first petitioner's license under the Drugs and Cosmetics Rules, 1945 have been initiated by the licensing authority on the basis of the test report, a copy whereof was supplied to him by the Directorate General of Health Services of the Ministry of Health & Family Welfare of the Government of India that issued the show cause notice dated October 3,2011 proposing to deregister the first petitioner and debar it from supplying the drug to the organization and depots named in the notice.

7. From the letter dated November 21,2011 of the Inspector it is evident that the Inspector who has been consistently contending and has now filed affidavit in compliance with an order passed in WP 20832 that no proceedings initiated by him were pending before him, has lastly informed the first petitioner that he was sending the original test report and a sealed portion of the sample to the first petitioner under sub-s.(3) of s. 25 of the Drugs and Cosmetics Act, 1940 for the first petitioner's comments.

8. Sub-section (3) of s. 25 of the Drugs and Cosmetics Act, 1940 is quoted below:

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed u/s 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are

pending that he intends to adduce evidence in controversion of the report.

9. Mr. Mukherjee appearing for the petitioners has submitted that for undisclosed reasons the Inspector collecting the test report and circulating it at will has come up with a case that since no proceedings initiated by him are pending before him, the petitioners are not entitled to adduce any evidence before him in controversion of the report. He has said that without giving the petitioners any opportunity of challenging the report, the respondents are taking steps that are highly detrimental to the petitioners' interests.

10. Mr. Bose appearing for the respondents in WP 20832 has submitted that since no proceedings were pending before the Inspector, there was no question of permitting the petitioners to adduce any evidence before the Inspector in controversion of the report. He has said that the Inspector has clearly stated in his affidavit that he did not issue any order under any provision asking the petitioners to do or restraining them from doing anything, though he advised the petitioners and appealed to their conscience not to sell the drug in question in public interest.

11. Mr. Bag appearing for the respondents in WP 21692 has questioned the jurisdiction of this Court to entertain the WP. He has said that since the show cause notice was issued by the licensing authority from Himachal Pradesh, this Court has no jurisdiction to entertain the WP. He has further submitted that since the drug has been found by the Government Analyst to be of sub-standard quality, this Court should not interfere in the matter, at least in public interest.

12. The show cause notice dated November 21, 2011 was issued on the basis of the report, a copy whereof was supplied to the licensing authority by the Directorate General of Health Services from Kolkata. Since the notice has its origin in the report obtained in Kolkata and supplied from Kolkata, it can be rightly said that a very important part of the cause of action giving the petitioners a right to action against it has arisen within the territories in relation to which this Court exercises jurisdiction under art. 226. I, therefore, hold that this Court has jurisdiction to entertain WP 21692.

13. It is clear that both the show cause notices have been issued on the basis of the test report that the Inspector has obtained from the Government Analyst in Kolkata. In view what the Inspector himself has said in his letter dated November 21, 2011, making reference to sub-s.(3) of s. 25 of the Drugs and Cosmetics Act, 1940, I am unable to accept the contention that since no proceedings initiated by the Inspector are pending before him, the petitioners are not entitled to adduce evidence in controversion of the report.

14. The Inspector has supplied the test report and a sealed portion of the sample in terms of the provisions of sub-s.(3) of s. 25; this he could not do unless he had initiated certain proceedings and the proceedings were pending before him. He wanted the first petitioner's comments, not for doing nothing, but, evidently, for

taking a final decision in the proceedings. There can be no doubt that the provisions of sub-s.(3) of s. 25 of the Act entitle the petitioners to adduce evidence before him in controversion of the report.

15. I am, therefore, of the view that the Inspector should give the petitioners reasonable opportunity of adducing evidence before him in the pending proceedings in controversion of the report, and that until he passes the final order in the proceedings no step should be taken in connection with the show cause notices dated October 3,2011 and November 21,2011. Accordingly, I dispose of both the WPs ordering as follows.

16. The Inspector shall give the petitioners reasonable opportunity of adducing evidence before him in controversion of the report. He shall then give final decision in the proceedings and communicate it to the petitioners. Until final decision is given and communicated by the Inspector, no further step shall be taken by the respondents in both the WPs in connection with the show cause notices dated October 3, 2011 and November 21,2011.

17. No costs. Certified xerox.