



(Case No. 04 of 2013)

In Re:

1st July, 2013

M/s Oracle Drugs & Ors.

Informant

And

Secretary, Department of Health & Family Welfare,
Government of Odisha & Another

Opposite Parties

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S. L. Bunker
Member

Present : Shri Soumyajit Pani, Advocate for the informant.



Order under section 26(2) of the Competition Act, 2002

The Informants are medicine shop owners operating within the different premises of public health facilities in the State of Odisha. The OP1 is the Secretary, Department of Health & Family Welfare, Government of Odisha and the OP2 is the Director, Health & Family Welfare, Government of Odisha.

2. The informants are owners of approved Medical Shops that operate within the premises of public health facilities in Odisha. These shops are governed by the guidelines formulated by the Department of Health and Family Welfare, Government of Odisha and revised from time to time.

3. As per the Informants, vide its resolution dated 17.11.2012, the State Government issued revised guidelines with few new conditions to be adhered to the selected allottees of medical shops located within the premises of public health facilities. In Para 16 the revised guidelines stipulated that the allottees operating within the public health facilities would supply drugs at discounted prices to the public and the information about discount offered on drugs sold would be displayed at a prominent place. The discounts to be given to the public were as follows:-

- @15% on MRP discounts in case of medical shops located within medical colleges and capital hospital premises
- @10% on MRP in case of medical shops located within district headquartered hospitals
- @7.5% on MRP in case of medical shops located within sub-divisional hospitals
- @5% on MRP in case of medical shops located within community health centres and public health centres.

4. The Informants alleged that the aforesaid resolution imposing condition of discounts upon the allottees was beyond the contract signed between the parties. The aforesaid Resolution itself provided that the condition/direction to give discount to the public was not applicable on Day and Night Medicine Shops in “Public Private Partnership” mode. Thus, the imposition of discount under Para-16 was discriminatory in nature.



5. The Informants further averred that under Para 13 of the aforesaid resolution mandated that each allottees shall appoint at least 3 pharmacists to supervise sale of drugs. As per the Informants, when the shop owner himself was a pharmacist and worked at the shop then there was no need to appoint 3 pharmacists. This condition would unnecessarily increase the establishment cost and reduce the profit margin of the allottees. It is alleged that above condition amounted to an abuse of dominance by the OPs through imposition of unreasonable condition on conduct of trade and hence, violative of the Competition Act, 2002 (“The Act”). The other condition of providing air conditioned storage for drugs is also alleged to be abusive. It is stated that the OPs have allowed allottees to construct a temporary shed on the space provided for medicine shops. In such temporary sheds it may be impossible to install an air conditioner.

6. On the basis of the above facts and circumstances, the Informants alleged violation of Section 4 of the Act by the OPs.

7. As per website of the OP1, apart from other welfare objectives, some of its objectives are as under:-

- To ensure health care services to all; particularly to the disadvantaged groups like scheduled tribes, scheduled castes & backward classes.
- To provide affordable quality healthcare to the people of the State, not only through the allopathic systems of medicine but also through the homeopathic & ayurvedic systems.
- To ensure greater access to primary health care by bringing medical institutions as close to the people as possible or through mobile medical health units, particularly, in the underserved & backward districts.
- To reduce maternal, infant & neo-natal mortality rates.
- *To guarantee to the people of Orissa free treatment (including free medicines) for certain major communicable diseases.*
- *To improve hospital services at the primary, secondary & tertiary levels in terms of infrastructure, drugs & personnel*



- *To impart training to doctors, nurses & other paramedical staff to upgrade their skills & knowledge to improve quality health care in the state and improve medical education in the State.*

8. The Opposite Parties are responsible for policy decisions to achieve the above objectives. The activity of the OP-1 in formulating the conditions of allotment of shops by way of resolution is not an economic activity. The activity is purely a policy making activity. The guidelines issued by Opposite Parties are applicable only to the shops / medical stores allotted by the Govt. that are located within the premises of public health facilities in state of Orissa and are not applicable in general to all chemists & druggists. The chemists & druggists allotted shops by the State within the premises of public health facilities can be bound with such reasonable conditions which facilitate the availability of medicines and drugs to the consumers at a reasonable price. Such a policy cannot be said to be an anti-competitive policy. The limits of discounts prescribed by the resolution are lower limits. The shops can compete with each other by giving higher discounts than what is provided by the resolution.

9. It must be kept in mind that the objective of the Act is to promote and sustain competition in order to protect the interests of consumers and to ensure freedom of trade. The conditions of allotment laid down by the State do not infringe any of the provisions of the Competition Act as the allottees had liberty to open their chemists & druggist shops and carry on trade anywhere in the city in which case they would not be bound by the conditions applicable to the shops allotted by State within the premises of public health facilities. The interest of consumers i.e. the patients were also not at stake by the conditions of providing discounts to the patients, keeping in view the necessities of poor persons who visit public health facilities. It is normally the common and the poor person, who cannot afford private health facilities, who visits public health facilities. The State had to ensure that he would get medicines at reasonable price from the chemists & druggists permitted to open shops within the area of public health facilities. The exemption granted to 'day and night medicine shops' in PPP mode from the resolution also cannot be held to be discriminatory. The terms & conditions of PPP mode shops have not been stated by the informant. It is quite probable that in PPP mode shops, the OP had put some other conditions of consumer benefits. In any case,



no customer will go to PPP mode shops if the PPP shops do not provide discounts being provided by other chemists & druggists within the public health facilities and this will be to the advantage of informant and other chemists & druggists having shops within the premises of public health facilities. The discrimination if any is not to the disadvantage of the informant. The conditions of engaging pharmacists and installing A.C. at storage facility are must for any chemist and druggist shop and cannot be considered as abusive.

10. The Commission finds that no prima facie case is made out against the Opposite Parties for directing investigation into the matter. It is a fit case for closure under section 26 (2) of the Act and is hereby closed.

11. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr.GeetaGouri)
Member

Sd/-
(AnuragGoel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
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