

M/S. HINDUSTAN ANTIBIOTICS LTD. ETC.  
v.  
M/S. PARENTERAL DRUGS (INDIA) PVT. LTD. ETC.

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NOVEMBER 22, 2000

[U.C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

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*Constitution of India, 1950*

*Articles 226 and 299—High Court Power to issue appropriate directions relating to social problems though lis between parties may not warrant such conclusion—Writ petition before High Court alleging arbitrary action in matter of award of contract for purchase of drugs from Government Undertakings—High Court noticing that Government Undertaking appeared to have supplied I.V. Fluids containing fungus and Government officials swore false affidavits—Issuance of notices to officials filing false affidavits and directions to State Government to prosecute persons responsible for supplying sub-standard I.V. Fluids—Judgment of High Court challenged contending that High Court transgressed its limits in the matter of exercise of jurisdiction—Held, though the directions are totally unwarranted and judicial dynamism has also its limits to warrant exercise of jurisdiction, but since the law courts have a social duty, issuance of appropriate directions for an inquiry would not be wholly unwarranted—However, the State did not take any steps prior to obtaining stay, and by reason of long lapse of time appeal has become infructuous.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3925 of 1990.

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From the Judgment and Order dated 5.4.90 of the Madhya Pradesh High Court in Misc. P. No. 1012 of 1989.

WITH

Civil Appeal No. 3926 of 1990.

G

A.K. Ganguli, A. Mariarputham, Aruna Mathur, Anurag D. Mathur, Sakesh Kumar, S.K. Agnihotri and R.P. Wadhvani for the appearing parties.

The following Order of the Court was delivered :

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A Civil Appeal No. 3925/1990. The appellant - M/s. Hindustan Antibiotics Ltd., a Government of India Undertaking, is in appeal against the impugned judgment of the Madhya Pradesh High Court and the principal grievance being a direction to the State Government to launch prosecution against the officers of the appellant-company for supplying sub-standard I.V. Fluids. There exists no manner of doubt that I.V. Fluids being a life saving drug need to contain the specification and any foreign element found therein ought to be taken note of rather seriously and as such at the first blush this court was of the view that no interference ought to be had, though Mr. Ganguli contended that the High Court has, in fact, transgressed its limits in the matter of exercise of jurisdiction and it is on this score further that the Court was invited to go into the matter in some greater detail.

Mr. Ganguli contended that as a matter of fact and admittedly the core question that fell for consideration before the High Court was whether Government possesses absolute discretion to confer any benefit on any one or should that be regulated by some norms'. Mr. Ganguli contended that question of sub-standard goods did not fall for consideration before the High Court; neither the High Court was otherwise within its jurisdiction to express any opinion in regard thereto. The opinion so expressed cannot, thus, Mr. Ganguli contended, but be termed to be obiter. Mr. Ganguli further contended that in any event the direction as contained in the judgment under appeal, cannot be termed to be otherwise in accordance with the norms and principles of law and there is existing a definite violation of the principles of natural justice since no notice was issued neither any explanation was asked for and without any even submission being made in regard thereto, an order has been passed by the High Court condemning the supplies of the government undertaking.

From a perusal of the judgment we find some credence to Mr. Ganguli's submission since the judgment itself records the admitted set of facts to the effect that M/s. Parenteral Drugs (India) P. Ltd. being the writ petitioner is regular manufacturer of drugs and the respondent Nos. 1 to 3 purchased drugs, medicines and other items alike materials including intravenous fluids for consumption in various hospitals in the State. The State Government, however, in order to afford protection to small scale industries in the State issued a Circular dated 9.11.1976 granting 10% price preference to small scale industries in the State. The policy of the Government as depicted therein in the matter of purchase of drugs has been that the same ought to be purchased from the government undertakings and that being the issue and core question

before the Court, it was in this sphere the arbitrariness had been recorded. After the hearing was concluded the Bench however, thought it fit to require the production of the files as regards the award of contract to Hindustan Antibiotics and it was on the perusal of the files that two letters were discovered in the files wherefrom it appeared that there was a supply of I.V. Fluids by Hindustan Antibiotics-appellant herein containing fungus and it was on the basis thereof the High Court felt that the officials of the government undertaking ought to be punished and prosecution ought to be launched. Severe criticism has been levelled against the government officials for swearing affidavits which are not true to its contents and prosecutions have been directed on that score as well.

Mr. Ganguli in support of the appeal on the basis of the facts above contended that law would not countenance such a state of judicial approval in the country and question of any prosecution without even a show cause notice or even without affording an opportunity to file an affidavit in the matter, would not arise. Mr. Ganguli further contended that the matter in dispute is not in issue and the issue before the Court was rather specific as regards the arbitrary action in the matter of award of contract which would otherwise not entail the consequences of initiation of a prosecution.

Incidentally, be it noted that the policy in the matter of award of contracts in favour of the government undertakings now stand changed and in fact the policy has been to recognise the small scale units and on the wake of the aforesaid question of there being any further arbitrary action would not arise. As such neither the State Government nor the appellant is inclined to proceed with the appeal excepting however for the directions as contained in paragraphs 41, 42 and 43 of the Judgment. Paragraphs 41, 42 and 43 so far as relevant for our purposes are set out herein :-

“41.....Keeping aside these two aspects for a while, a case for wilful suppression of material facts, and knowingly swearing a false affidavit, concealing vital facts, is made out against the respondents 1, 2, 3 and 4. Let notices be issued, calling upon each one of them to show cause as to why they should not be ordered to be prosecuted for knowingly swearing false affidavits. Notices be made returnable within three weeks.

42. As for drug offences, the State is directed to prosecute the respondent No. 4, its agents and/or servants concerned in accordance with law for supplying sub standard I.V. Fluids.

A 43. Uncertainty as to the quality of the product is perhaps more  
 B intense in medicine than any other commodity and added to it is the  
 C consumer's- the patients lack of information. One of the most  
 D significant aspects of monopoly health services and medical care  
 E unlike other services, are its expensive components, controlled by the  
 F physician's decision making process, where the patient or consumer  
 G has no role, yet to have a very high level of trust, in, and acceptance  
 H of physician's role. It is this trust of the patient, which has been  
 I breached with impunity by the respondents, who created a monopoly  
 J in supply of poor quality drugs at premium rates, that too in the name  
 K of public-interest, little realising that human life has no spare, who has  
 L benefited by such conduct, is a matter of investigation, but it was  
 M certainly a case exposing the poor patient, to all sorts or risks and  
 N hazards of medication, as well as the unhygienic conditions in which  
 O the I.V. Fluids supplied by the H.A.L. were stocked. What is worst is  
 P that all this goes on in the name of 'public interest'. It is time that the  
 Q respondents, the Directors of Health Services and Medical Education  
 R learn a bit of grammar of public-interest and welfare economics of  
 S medical care rather than in indulging pure mathematics thereof. It calls  
 T for a thorough investigation and respondent State is directed to get  
 U the matter investigated and proceed against all those involved and  
 V concerned in accordance with law."

E Admittedly neither of parties came to court with a case of the nature  
 F as has been depicted above. While it is true that the observations of the  
 G Court as the one noticed above, are not as strictly warranted in the facts but  
 H one need not fail to appreciate that the law courts exist for the society and  
 I in the event of there being any social problem it would be well within the  
 J domain of the law court to take such step or steps as they may deem fit and  
 K appropriate and this is so in spite of the fact that the lis between the parties  
 L does not warrant such a conclusion. But in the matter in issue by reason of  
 M the long lapse of time the whole exercise has become totally infructuous :  
 N Eleven years have passed and the State however has not taken any steps in  
 O terms thereof prior to the obtaining the order of stay from this Court.

H On the wake of the facts as above and by reason of the expiry of such  
 I a long lapse of time this appeal has become infructuous. We do however  
 J deem it expedient to record that while it is true that the directions as above,  
 K are totally unwarranted and judicial dynamism has also its limits to warrant  
 L exercise of jurisdiction to the extent as above, but since the law courts are

having a social duty, issuance of appropriate directions for an enquiry would not be wholly unwarranted. The appeal is disposed of accordingly. No order as to costs. A

*Civil Appeal No. 3926/1990.* This appeal is disposed of in terms of the order passed in civil appeal No. 3925/1990. No order as to costs.

R.P.

Appeals disposed of. B