

ITEM NO.102

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.423/2003

ALL INDIA DRUG ACTION NETWORK & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA MINISTRY OF HEALTH & ORS.

Respondent(s)

(With appln.(s) for permission to file additional documents,  
intervention and directions)

WITH W.P.(C) No.459/2012 (PIL-W)

(With appln.(s) for permission to appear and argue in person and  
permission to file lengthy list of dates)

Date : 05-10-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.  
Ms. Tanya Agarwal, Adv.  
Ms. Jyoti Mendiratta, AOR

Petitioner-in-person

For Respondent(s) Ms. Pinky Anand, ASG  
Mr. A.K. Sanghi, Sr. Adv.  
Mr. Bharat Singh, Adv.  
Ms. Snidha Mehra, Adv.  
Mr. Rishi Kant, Adv.  
Mr. Wasim A. Qadri, Adv.  
Mr. Gurmeet Singh Makker, AOR  
Mr. Pramod Kumar, Adv.

Mr. Mukesh Kumar Maroria, AOR

Ms. Shobha, AOR

Mr. Jayant Kumar Mehta, AOR  
Mr. Krishna Sarma, Adv.  
Mr. Bhaskar Bhattacharya, Adv.  
Mr. Navnit Kumar, Adv.  
Ms. Archita Phookan, Adv.  
M/s. Corporate Law Group, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Heard in-part.

Mr. Sunil Chopra, Principal Legal Consultant, National Pharmaceutical Pricing Authority, who was directed to remain present in person on the earlier occasion, is personally present in the Court along with other officers.

Ms. Pinky Anand, learned Additional Solicitor General appearing for the Union of India shall file a chart (on the basis of tenders for bulk purchases by the State governments concerned) with regard to essential medicines with reference to the chart annexed by Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner. The purpose of directing the Central Government to file such a chart is to verify whether the consumers in every nook and corner of the country are benefited or otherwise. As we find, the formula which is based on market price is driven by market trends instead of cost based price, as was the earlier formula of 1995. The market price takes on such components which are really based on variable factors.

Mr. Gonsalves shall point out whether this market driven price gives an advantage to the manufacturer. As an example, learned senior counsel would contend that the cap that has been fixed in respect of medicine which controls blood cholesterol, if put at Rs.67.40, a manufacturer supplying the same to the States of Tamil Nadu or Rajasthan purchasing in bulk and having a large population, can negotiate. As a consequence, the price will be approximately

lower than thirty times. Moreover, the market price based formula would result in a price rise of 2900 per cent as against the cost based formula. In essence, submission of Mr. Gonsalves is that the price fixation has to benefit the consumer who needs medicine. If the price control is based on market driven price factors, it will be unreasonable and irrational, besides being disadvantageous to the consumer.

The submissions made by Mr. Gonsalves have been seriously opposed by Ms. Pinky Anand, learned Additional Solicitor General.

Quite apart from the above, an affidavit shall be filed by the Central Government clarifying why it shifted from cost based price formula to market based price.

Let the matter be listed on 10<sup>th</sup> January, 2018.

Ms. Shobha, learned counsel appearing for the National Human Right Commission is permitted to file the report of the Committee constituted by the Commission.

(Chetan Kumar)  
Court Master

(H.S. Parasher)  
Assistant Registrar