

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11858 of 2022**

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AMIT AGENCIES THROUGH PARTNER MANISH DINUBHAI PATEL
Versus
UNION OF INDIA

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Appearance:

MR VIJAY PATEL assisted by MR DARSHAN DAVE FOR HL PATEL
ADVOCATES(2034) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,10,11,12,13,3,4,5,6,7,8,9
MR SAHIL TRIVEDI, AGP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 04/07/2022
ORAL ORDER

1. Learned advocate Mr.Vijay Patel assisted by learned advocate Mr.Darshan Dave appearing for the petitioner has submitted that the online sale of medicines and scheduled drugs is not permissible under the provisions of the Drugs and Cosmetic Act, 1990 and such illegal sale has serious consequence on the public health. He has submitted that the Drugs Controller General of India has banned the sale through e-pharmacies vide circular dated 30.12.2015. It is submitted that by the said circular, it was instructed to all the State and Union Territories Drugs Controller to put a strict vigil on the online sale of medicines and take action against those indulging in online sale of medicines in violation of the Drugs and Cosmetics Act and the rules made thereunder, in the interest of public health. It is submitted that a comprehensive report dated 30.09.2016 was also given by the

sub-committee constituted by the Drug Consultative Committee regarding the sale of medicines online and the said Sub-committee had also issued various recommendations, which have not been followed and implemented. It is submitted that the online e-pharmacy service providers such as respondent Nos.5, 6 and 7 are misusing the process by arranging a call between the customer and their employed medical professionals, wherein on the basis of a skeletal discussion, the prescription is generated and the doctors providing such consultation, do not even see the diagnostic or other medical reports of the purported patient and issue the prescription on the basis of very limited and formal conversation, which affect the health of the citizens directly. It is submitted that such prescription has no sanctity in the eyes of law and action needs to be taken by the Medical Council of India (now known as National Medical Commission) against the doctors, who provide prescriptions, which are not genuine. It is also submitted that it is not even known that such medical professionals have the specialized qualification to prescribe the drug on their letterhead.

2. It is further submitted by the learned advocate for the petitioner that the websites selling the drugs and prescription medicines do not have licenses as required under Section 18 of

the Drugs and Cosmetic Act, 1940 read with Rule 61 and 62 of the Drugs Rules, 1945. Further, it is submitted that it is shocking that in the online pharmacies, certain scheduled drugs are dispensed without any prescription, which can be ordered by the child aged below 18 years and which would be injurious to his health. Further, it is submitted that the provision with regard to issuance of license to the e-pharmacy firms, also does not satisfy as there is no such provision mentioned in the Act.

3. Learned advocate for the petitioner has submitted that the sale of Schedule H, H1 and X drugs under the Drugs Rules, 1945 / Indian Medical Act, 1956 can only be allowed on the prescription of the registered medical practitioner and online websites are selling the drugs and prescribed medicines openly and freely, without any compliance of provisions of law and regulations. Thus, he has submitted that such practice is required to be stopped and prohibited.

4. In view of the submissions advanced by the learned advocate Mr. Patel, *prima facie* this Court is of the opinion that the allegations made in the writ petition appear to be true and if the sale of the scheduled drugs in such a manner is going on then the same will have a direct adverse impact on the health and well being of the citizens.

5. Under the circumstances, issue **Notice** returnable on **29.07.2022**. Learned AGP waives service of notice for and on behalf of the respondent No.2. The respondents are directed to file appropriate affidavit on or before the next date of hearing dealing with all the contentions raised in the writ petition. It will be open for the petitioner to serve the respondents through RPAD over and above the regular mode of service.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA

