

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ
PROVINCE OF PUNJAB through Secretary Primary and Secondary Healthcare, Punjab,
Lahore and others---Petitioners

Versus

Messrs BLOOM PHARMACEUTICALS (PVT.) LIMITED and others---Respondents

C. P. 1692-L/2020, C. P. 1792-L/2020 and C.P. 5-L of 2021, decided on 28th January, 2021.

(Against the orders of Lahore High Court, Lahore dated 08.09.2020, passed in W.P. No.40067/2020, dated 15.09.2020 passed in W.P. No.415/2020, dated 17.11.2020 passed in W.P. No.32377/2020)

Drugs Act (XXXI of 1976)---

----Ss. 22(4) & 22(5)---Reports of Government Analysts---Provincial Quality Control Board --- Discretion to allow or reject a request for re-testing---Scope---Question as to whether the Provincial Quality Control Board ("Board"), etc. enjoyed the "discretion" under S. 22(5) of the Drugs Act, 1976 ('the 1976 Act') to either allow or reject the request of the accused or the complainant for re-testing of the drug---Held, that other than the suo motu power enjoyed by the Board, etc. to send the drug for retesting, the Board, etc. also enjoyed the discretion to allow or disallow the request for re-testing by the accused or the complainant---Board, etc. enjoyed independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in such regard.

Perusal of sections 22(4) and 22(5) of the Drugs Act, 1976 ('the 1976 Act') showed that once the Report was received by the person, from whom the sample was taken (referred to as an accused in subsection (5), he could within ten days file, in writing, before the Inspector, or the Board, etc. where his case was pending, his intention to adduce evidence in contravention of the Report. This intention of adducing evidence in contravention of the Report actually was in the nature of a complaint against the Report specifying the grounds of contravention of the Report, on the basis of which, the person proposed to adduce evidence later on. Unless, subsection (5) was invoked, the complaint against the Report took its lawful course and the matter was finally concluded by the Board, etc. which had received such a complaint.

However, before the matter regarding the Report was concluded under subsection (4), subsection (5) of section 22 of the 1976 Act provided yet another avenue to the accused, as well as, the complainant. Once the complaint was filed against the Report by the accused within ten days as required by section 22(4), the Board or any other authority, before whom such a complaint against the Report was pending, could on its own motion or in its discretion on the request of the accused or the complainant may allow re-testing of the drug from the Federal Drug Laboratory, etc. Other than the suo motu power enjoyed by the Board, etc. to send the drug for retesting, the Board, etc. also enjoyed the discretion to allow or disallow the request for re-testing by the accused or the complainant. The request would be examined on the basis of the grounds already raised by the accused against the Report filed within ten days under section 22(4) of the 1976 Act. The said request, did not stand alone and must be preceded with a complaint under section 22(4) of the 1976 Act. There was no timeframe under the law for filing such a request but according to the scheme of the law such a request was to be made prior to the decision of the complaint filed by the accused against the Report under section 22(4). On the whole, the Board, etc. enjoyed independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in such regard.

Rana Shamshad Khan, Additional A.G. along with Shaheen Iqbal, Secretary, Aleem Akhtar Cheema, Law Officer and M. Farooq Bashir Butt, Director for Petitioners (in all cases).

Rana Maqsood Afzal, Advocate Supreme Court for Respondents (in C.P. 1692-L of 2020).

Haroon Dugal, Advocate Supreme Court for Respondents (in C.P. 5-L of 2021)

Nemo for Respondents (in C.P. 1792-L of 2020).

Date of hearing: 28th January, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The question that requires determination by us revolves around the interpretation of section 22 subsections (4) and (5) of the Drugs Act, 1976 ("Act"). The question is whether the Provincial Quality Control Board ("Board"), etc. enjoys the "discretion" under section 22(5) of the Act to either allow or reject the request of the accused or the complainant for re-testing of the drug. The occasion of re-testing arises only when the drug has already been tested and the Report of the Government Analyst has been challenged within ten days¹ before the Board, etc. by the person from whom the sample has been taken or the warrantor of the drug.

2. Learned Additional A.G. representing the petitioners submits that it is the discretion of the Board, etc. to allow or disallow such a request as has been clearly provided under section 22(5) of the Act. While on the other hand, learned counsel for the respondent companies argues that if the Report of the Government Analyst ("Report") is challenged by the accused or his warrantor within 10 days of the receipt of the said Report in terms of section 22(4) of the Act, the subsequent request by the accused for retesting of the drug from the Federal Drug Laboratory, etc. is a mere mechanical requirement and the Board, etc. has no discretion to disallow such a request for re-testing.

3. We have heard the arguments of the learned counsel for the parties and have examined section 22 subsections (4) and (5) of the Drugs Act, 1976 (Punjab Amendment), which are reproduced hereunder for ready reference:-

"Section 22. Reports of Government Analysts.---(1) The Government Analyst to whom a sample of any drug has been submitted for test and analysis under subsection (3) of section 19 shall deliver to the Inspector submitting it a signed report in quadruplicate in the prescribed form and forward one copy thereof to the authority as may be prescribed.

(2)

(3)

(4) Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst [or the Notified Drugs Laboratory] shall be admissible as evidence of the facts stated therein without formal proof and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within [ten days] of the receipt of a copy of the report notified in writing to the Inspector or [Provincial Quality Control Board or, as the case may be, the Central Licensing Board or the Registration Board or the Drug Court] before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(5) Where a person has, under subsection (4), notified his intention of adducing evidence in contravention of a [report of Government Analyst or of Notified Drugs Laboratory] [Provincial Quality Control Board or, as the case may be, the Central Licensing Board or the Registration Board or the Drug Court] may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug lying with the Board concerned under sub-section (3) of section 19 to be sent for test or analysis to the Federal Drug Laboratory or any other laboratory specified for the purpose by the Federal Government [or the Provincial Government] which shall make the test or analysis and report in writing signed by, or under the authority of, the person for the time being Incharge of the Federal Drug Laboratory, or, as the case may be, such other laboratory, the result thereof and such report shall be conclusive evidence of the facts stated therein."

Perusal of the above provision shows that once the Report is received by the person, from whom the sample was taken (referred to as an accused in subsection (5)), he can within ten days file, in writing,

before the Inspector, or the Board, etc. where his case is pending, his intention to adduce evidence in contravention of the Report. This intention of adducing evidence in contravention of the Report actually is in the nature of a complaint against the Report specifying the grounds of contravention of the Report, on the basis of which, the person proposes to adduce evidence later on. Unless, subsection (5) is invoked, the complaint against the Report takes its lawful course and the matter is finally concluded by the Board, etc. which has received such a complaint.

4. However, before the matter regarding the Report is concluded under subsection (4), subsection (5) of section 22 provides yet another avenue to the accused, as well as, the complainant. Once the complaint is filed against the Report by the accused within ten days as required by section 22(4), the Board or any other authority, before whom such a complaint against the Report is pending, can on its own motion or in its discretion on the request of the accused or the complainant may allow re-testing of the drug from the Federal Drug Laboratory, etc. Other than the suo motu power enjoyed by the Board, etc. to send the drug for retesting, the Board, etc. also enjoys the discretion to allow or disallow the request for re-testing by the accused or the complainant. The request will be examined on the basis of the grounds already raised by the accused against the Report filed within ten days under section 22(4) of the Act. The said request, does not stand alone and must be preceded with a complaint under section 22(4) of the Act as discussed above. There is no timeframe under the law for filing such a request but according to the scheme of the law such a request is to be made prior to the decision of the complaint filed by the accused against the Report under section 22(4). On the whole, we are of the view that the Board, etc. enjoys independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in this regard.

5. The view expressed by the High Court that the Board, etc. does not enjoy any such discretion in the matter of re-testing the drug is not correct. We, therefore, set aside the impugned judgments and direct the Board, etc. or (where ever the matter is pending) to decide the request of the respondent accused, in accordance with law and in the light of this judgment, by passing a speaking order within a month from the receipt of this order.

6. For the above reasons, the impugned orders passed by the High Court are set aside and these petitions are converted into appeals and allowed in the above terms.

MWA/P-4/SC Petition allowed.