

SC asks govt to revisit new drug pricing policy

Expressing concern over expensive life-saving drugs and other essential medicines for major diseases, the Supreme Court on Wednesday asked the government to revisit its new National Pharmaceutical Pricing Policy, 2012, for fixing prices of essential medicines in the country and also the Drugs (Prices Control) Order, 2013 (DPCO 2013), notified by the government in May 2013.

Observing that the Centre can look into the desirability of inclusion of life-saving drugs and other medicines in the DPCO 2013, a bench headed by justice T S Thakur asked the government to consider the objections raised by All India Drug Action Network (AIDAN), an NGO, on pricing of essential drugs in India and also the objections on the list of essential drugs in the DPCO 2013. The representation will be made before the department of pharmaceuticals in the ministry of chemicals and fertilisers, and the health ministry. The apex court said that the government should ensure that the formula adopted for fixing of prices for the essential drugs should not make the drugs unaffordable and lead to absurd results. Any such absurdity shall be attended to by the competent authority and corrective measures should be taken, the judges said.

“The competent authority shall examine NGO’s representation and take into consideration material in support of its claims and opinion of experts on the subject and pass appropriate orders,” the bench said, adding that if the points raised here are rejected by the competent authority, reasons for the same should be recorded and communicated to the NGO within six months. However, it refused to give a formal direction to the government to hear the Association of Pharmaceutical Companies.

Observing that the government is much better placed to decide these issues, the court also said taking a decision on this subject also involves competing considerations of making the pharmaceutical industry grow, and providing essential drugs at affordable prices to everyone.

The directions were given after AIDAN asked the government why the new drug pricing policy, which intends to put a cap on prices of 348 essential medicines, had changed the formula for deciding the cap from a cost-based mechanism to a market price-based mechanism.

Senior counsel Colin Gonsalves, appearing for the NGO, alleged that under the new policy the margins for the drug manufacturer and the dealer has increased multiple times.

The court also noted the NGO’s submissions that “earlier formula took into consideration manufacturing cost and provided for 100% mark up for determining prices. This formula has been abandoned to the prejudice of less fortunate of the society which can’t afford them,” Stating that the drug pricing policy of 1995 was much better than the current system, Gonsalves said that while issuing DPCO 2013 the government has relied upon the formula that neither was in tune with the spirit of the order nor serve the purpose of bringing down drug prices.

He said that the formula adopted and applied by the government for fixing drug prices in the country has not taken note of ground realities like supplies made by pharmaceutical companies to state governments at far lesser rates compared to rates at which the Centre is procuring medicines.