

RAJYA SABHA

Monday, the 17th August, 1987/26
 Sravana, 1909 (Saka)

The House met at eleven of the clock. The Deputy Chairman in the Chair.

ORAL ANSWERS TO QUESTIONS

Drug Price Fixation Cases

*281. SHRI CHANDRIKA PRASAD
 TRIPATHI:

SHRI RAJNI RANJAN
 SAHU†

Will the Minister of INDUSTRY be pleased to state:

(a) what are the names of the Drug companies whose price fixation cases were decided by the Supreme Court from January, 1987 to July, 1987;

(b) what are the drugs involved in each case, and what are the orders passed in each case, indicating the date of each order;

(c) whether any company has implemented the prices based on the judgement of the court; if so, what are the details thereof; and

(d) what is the amount which each company has been asked to deposit and what is the time given for depositing the amount?

THE MINISTER OF STATE IN THE DEPARTMENT OF CHEMICALS AND PETRO-CHEMICALS IN THE MINISTRY OF INDUSTRY (SHRI R. K. JAICHANDRA SINGH): (a) to (d) A Statement is laid on the Table of the House.

Statement

(a) and (b) The Supreme Court decided the price fixation case of M/s. Cyanamid India Ltd. on 10th April, 1987 and extended the judgement to some other companies on 1st May, 1987. The details are given in the Annexure. (See below).

(c) All the concerned companies were advised to implement the prices and the State Drugs Controllers were also asked to ensure implementation of price fixed by Government for these companies.

(d) The Supreme Court has been moved in the concerned cases to recover the amount as per the undertakings given by them.

Annexure

Sl. No.	Name of the Company	Name of the bulk drugs/formulations	Date of judgement	Details of orders passed by Supreme Court
1	2	3	4	5
1	M/s. Cyanamid India Ltd.	Tetracyclines and formulations.	10-4-1987	Prices fixed by Govt. were upheld.
2	Do.	Diethyl Carbamazine formulations.	10-4-1987	Do.
3	M/s. Geoffery Manners & John wyeth	Benzathine Penicillin & its formulations.	1-5-1987	Do.

†The question was actually asked on the floor of the House by Shri Rajni Ranjan Sahu.

1	2	3	4	5
4	M/s. Pfizer Ltd.	Oxytetracycline, and its salts and formulations based thereon.	1-5-1987	Prices fixed by Govt. were upheld.
5	M/s. Hoechst India Ltd.	Baralgan, Pyrolidine Methyl Tetracycline, Pheniramine, Glybenclamide, Frusemide and formulations.	1-5-1987	Do.
6	M/s. Parke-Davis	Chloramphenicol.	1-5-1987	Do.
7	M/s. Ethier Ltd.	Tetramesol and its formulations.	1-5-1987	Do.
8	M/s. Anil Starch	Dextrose Anhydrous.	1-5-1987	Do.
9	M/s. Merind	Dexamethasone and its formulations.	1-5-1987	Do.
10	M/s. Tamil Nadu Dadha	Calcium Lactate.	1-5-1987	Do.
11	M/s. Griffon Labs.	Procaine Penicillin V and formulations.	1-5-1987	Do.
12	M/s. S. G. Pharmaceuticals	Oxyphenbutazone, Zylocaine and formulations based thereon.	1-5-1987	Do.

SHRI RAJANI RANJAN SAHU:
Madam, Deputy Chairman, the Supreme Court in their recent judgment between January 1987 and July 1987 has set aside the order of Delhi High Court and restored the validity of Drug Price Control Order of 1979. Madam, the fact goes like this that 16 multinational drug companies obtained a stay order from Delhi High Court against the Drug Price Control Order, 1979 as long back as in 1981 on price fixing notification. The drug companies continued to sell their product by over-charging the poor consumer and made more than Rs. 100 crores as unintended profit. The Supreme Court has given the ruling that it is the consumer's—and not the manufacturer's—interest that must come first in the determination of drug prices and pronounced their profiteering in life-saving drugs as “diabolical”, a menace which has to be fettered and curbed.

I would like to know from the hon. Minister whether he will help

the consumer who has been deprived of the price fixation for seven years, and whether the consumer will enjoy the benefit of DPCO, 1979, as per the direction of the Supreme Court, and whether fair price fixation has been implemented or not. Mere asking the State Drug Controller does not help the consumer.

SHRI R. K. JAICHANDRA SINGH:
We have taken various steps. The Supreme Court gave a judgment first on 10th April, 1987 and subsequently it was extended to 11 other cases on May 1, 1987. As per directions of the Supreme Court, within two months of these dates, we have given a hearing to the companies, and within two weeks of the hearing, we have given our decision on review petitions filed earlier. On the strength of that, to recover the amounts which are due from these 12 companies, the hon Member says it is about Rs. 100 crores...

SHRI RAJNI RANJAN SAHU: Rs. 300 crores; the Supreme Court has said it, and I have also got the figures...

SHRI R. K. JAICHANDRA SINGH: Last time the hon. Member said that it was Rs. 800 crores. Anyway, I am narrating the facts.

SHRI RAJNI RANJAN SAHU: I said it is more than Rs. 100 crores, as per Supreme Court order and Rs. 800 crores is more than 100 crores, so I stick to what said earlier.

SHRI T. CHANDRASEKHAR REDDY: Sit down; don't disturb the Minister.

SHRI RAJNI RANJAN SAHU: Don't tell me; I cannot sit down by your orders. It is for the Chair.

SHRI R. K. JAICHANDRA SINGH: I would like to bring to the notice of the House the steps that we have taken. Last time also, I had mentioned some of these steps that we have taken and I will repeat them. In May, we had appointed a Special Officer for the purpose of following up the recovery amounts as a result of the Supreme Court judgment. All the State Drug Controllers have been asked, through telex message, to ensure that after fixation of price by the Government in respect of items, as a result of the disposal of review petitions, as per direction of the Supreme Court, the drugs concerned are available at prices fixed by the Government. For the recovery, the Government has issued notices to all the concerned companies in whose cases review petitions have been decided after hearing, to deposit the difference in amounts charged by them and amounts fixed by the Government, within a period of three weeks. This is a step which the Government by itself has taken. Madam, we have already moved the Supreme Court. As per the direction of the Supreme Court, we have given them a hearing. As per the

direction of the Supreme Court, after the hearing, we have disposed of the review petitions. On the basis of that, we have again moved the Supreme Court last week that the thirteen companies, the twelve or the thirteen companies, be asked by the Supreme Court to adhere to the undertaking the companies gave. We have asked the Supreme Court. In fact, there are two steps which we have taken. Simultaneously, we have ourselves issued notices to the companies that whatever is the difference, the money which they have overcharged, should be deposited with us. Simultaneously, we have taken the umbrella, the coverage, of the Supreme Court. We have moved them to recover the amount and we have already filed a case in the Supreme Court.

श्री रजनी रंजन साहू : मैडम, मेरा प्रश्न का उत्तर उन्होंने नहीं दिया कि जो डी० पी० सी० ओ० है, उसका इम्प्ली-टेशन किया गया या नहीं जिसके लिये सात साल तक मुकदमा चलता रहा उसका इम्प्लीटेशन हुआ था नहीं ? मैडम, मेरा दूसरा सप्लीमेंटरी यह है कि इन्होंने कहा है कि सुप्रीम कोर्ट को इसके लिये एप्रोच किया है मैं जानना चाहता हूँ कि जब इनके पास अधिकार है एसेनशियल कामडिटीज ऐक्ट के अंतर्गत जिससे इस तरह की कोई रकम को वसूल कर सकते हैं तो मुझे हैरत इस बात की है कि इन्हें पुनः सुप्रीम कोर्ट में जाने की क्या आवश्यकता पड़ी । क्या मंत्री महोदय इन कम्पनियों के खिलाफ एसेनशियल कामडिटी ऐक्ट के तहत कार्यवाही के लिए सदन को आवश्यक करेंगे ?

SHRI J. VENGAL RAO: We have filed a petition in the Supreme Court. The Supreme Court was pleased to ask the respondent companies that they have to deposit the amount as per the undertaking given by them in the Drug Price Equalisation Fund within two weeks from the date of the order. Further, the Government of India was asked to inspect the records. They have to deposit within two months. The

order was passed on the 3rd of this month. They have to deposit with the Supreme Court. They have given an undertaking to the Supreme Court.

THE DEPUTY CHAIRMAN: By which date you said?

SHRI J. VENGAL RAO: 3rd August.

श्री रजनो रंजन ताहू : मैडम, जब एसेसियल कामंडिटीज एक्ट के अंतर्गत इनको अधिकार है तो फिर उससे बसूली क्यों नहीं करते हैं ?

SHRI J. VENGAL RAO: Where is the need? The Supreme Court gave a direction to them that they have to deposit the amount with them. They have to deposit the amount with the Supreme Court. We filed a petition in the Supreme Court and the Supreme Court ordered that they must deposit within two weeks the whole amount.

PROF C. LAKSHMANNA: Madam Deputy Chairman, the hon. Minister says that the Supreme Court has passed an order that the amount has to be deposited within two months. This is nothing but taking refuge under the Supreme Court's order. In the case of one company, the difference between the prices that were being charged and the DPCO prices was of the order of 1,360 per cent. If that is the case, instead of taking refuge under the Supreme Court's order, what is it the Government has been doing in the case of the poor consumer, to save the poor consumer, the person who is dying for want of such essential drugs? What is it you have been doing? You simply say that you will wait for two months. This will not help. What steps you have taken even after 3rd August when the Supreme Court gave its decision? You simply cannot say that the Supreme Court has passed the order and, therefore, you will wait for two months. In

the meanwhile, they will go to the Supreme Court or some other court perhaps and then again you will wait for months. During all this period, essential drugs would not be available to the common man who will be put to incredible suffering. Therefore, I would like to know what steps have been taken during these fifteen days?

SHRI J. VENGAL RAO: The Supreme Court, in its order, directed the Government to give a hearing to them, to these thirteen companies. Then, we gave notices to all these companies to deposit the amount in the Drug Price Equalisation Account. In addition to this, we filed a petition in the Supreme Court. The Supreme Court passed the order directing the companies to deposit the amount immediately.

PROF C. LAKSHMANNA: DPCO is there. You could have gone ahead with the whole thing. Why did you not go ahead? Why are you depending on the Supreme Court?

SHRI R. K. JAICHANDRA SINGH: We have done that. We have issued notices. *Interruption*. We cannot go and collect money from them, from their pockets. Can we do that?

SHRI VISHVJIT PRITHVIJIT SINGH: Madam, the main money which is made by these companies is made in formulations and not in the bulk drugs. Let me show you, Madam, the order of the Supreme Court. This particular order is in the Cyanamid case. On page 49 the Judgement says: But we perceive in public interest it is necessary that the price of formulations should be fixed close on the heels of the fixation of the bulk drug prices. Madam, this Department has not fixed the prices of formulations and let me show you how they have taken advantage. I am quoting from the answer given by the hon. Minister in the Rajya Sabha on 21st April, 1986.

AN HON. MEMBER: Which Minister?

SHRI VISHVJIT PRITHVIJIT SINGH: The same Minister. In that answer in the Annexure, it is shown how even where the Government has fixed a higher price for the bulk drug, the company has gone to the court and taken a stay. Why, Madam? I can give you examples. Cyanamid has taken it where the Government fixed the price of tetracycline at Rs. 746 and the company price had been Rs. 650. In the case of Pfizer in the case of Oxytetracycline where the Government had fixed a higher price, even then they went to the court. The reason was, so that they could make money out of formulations and could charge whatever they liked on the formulations.... One Minute, Madam, this is very important point. It was upto the Minister and his Department to fix the price of formulations under the DPCO, which they did not do. In the case of Cyanamide they did not do it, in the other cases also they did not do it. In the same Annexure, it is shown that the whole lot of formulations made from Tetracycline, in other words Ledramycine which is sold by Cyanamide ... One minute, Madam, this is very important. In the case of Pfizer's teramycine they have not fixed the price. And the companies have made a tremendous amount of unintended profits. I would like to know from the hon. Minister when the Supreme Court has said that the difference between the Government price and the price charged has to be collected, how the Minister proposes to go about collecting the difference when he has not even notified the price.

SHRI R. K. JAICHANDRA SINGH: Madam, we have notified the price. But in 1981 in these 12 or 13 cases they challenged the price fixed by the Government.

SHRI VISHVJIT PRITHVIJIT SINGH: Only bulk drug formula-

tions. I can prove it from your own answers. How can you get away from it?

SHRI R. K. JAICHANDRA SINGH: Madam, we could not fix the prices because these 12-13 companies challenged the order and the prices fixed by the Government under the law. (Interruptions).

THE DEPUTY CHAIRMAN: Let him answer, please.

PROF. C. LAKSHMANNA: You are all the while taking refuge under the Supreme Court order.

SHRI J. VENGAL RAO: First allow him to answer. You can put further supplementaries. What is there?

THE DEPUTY CHAIRMAN: You cannot have any answer if you go on asking supplementaries while sitting in your seats. This is not going to help. Let him reply. Then you can ask a second supplementary.

SHRI VISHVJIT PRITHVIJIT SINGH: Please allow me one more supplementary after this. Will you?

THE DEPUTY CHAIRMAN: He is answering your supplementary. Let him answer it first. Once you ask a supplementary, then somebody from this side and somebody from that side start asking. Others also have to ask. I cannot allow only one Member to go on asking. Please let him answer.

SHRI R. K. JAICHANDRA SINGH: So, Madam, they challenged the order and the price fixed by the Government in 1981. They challenged the price fixed under the DPCO, 1979. Then they went to the court. They went to Delhi High Court. They challenged the order of the Government. They obtained a stay order. Ultimately on the 10th of April, 1987 and also on the 1st

of May, in respect of 12 other cases, the Supreme Court finally struck down the order and judgment of the Delhi High Court and confirmed that the price fixed by the Government should be followed. This came only about two, three months back. They gave certain directions—that within two months of the Supreme Court's orders you must give a hearing of the review petitions filed earlier in the 80's. In 1981-82 they filed review petitions against the price fixation made by the Government, but that was kept in abeyance because the cases were lying in the Supreme Court and so *sub judice*. So the Government did not decide and could not decide on those review petitions filed by the different companies. So, as per the directions of the Supreme Court, within two months of these judgments, we gave them a hearing and, in fact, the Government had reconfirmed the earlier prices they had fixed and within two weeks we notified them. Now the steps we have taken, I have put before you and before the honourable House. We have both moved the Supreme Court on one side and on our side issued notices that they should deposit the amount overcharged within three weeks. Simultaneously we have moved the Supreme Court. Madam, we do not know exactly the amount that is overcharged because we do not know how many tablets and how many vials had been sold.

SHRI VISHVJIT PRITHVIJIT SINGH: It is incredible.

SHRI R. K. JAICHANDRA SINGH: It is for the companies to prove that this is the amount they have to deposit with the Government, in the DPEA. We will go and check up the account which they have given and if they give a wrong statement we will prosecute them.

THE DEPUTY CHAIRMAN: Mr. Swaminathan.

SHRI VISHVJIT PRITHVIJIT SINGH: Madam, he has not answer-

ed my question. My question related to formulations and the honourable Minister has not answered that question. That is all I have to ask. He has not answered my question. (Interruptions)...

SHRI R. K. JAICHANDRA SINGH: I am yielding to him. In the disposal order on the review petitions for bulk drugs, the formulation prices have been confirmed.

SHRI VISHVJIT PRITHVIJIT SINGH: You must fix the prices. This is incorrect.

THE DEPUTY CHAIRMAN: Please sit down.

SHRI G. SWAMINATHAN: Other Members should also be allowed to ask questions. If you are going to allow all other Members to ask supplementaries, how can we ask questions?

Madam, the formulation prices have to be reasonable because the profitability in formulations is there but there is no profitability in basic chemicals, and formulation prices have to be calculated in such a way that the manufacturers also make a profit. Otherwise, what will happen is, you may have price control but the manufacturers find that they are going under. Most of the pharmaceutical companies are going under—which can be seen from the latest market report—and if you allow them to go on like that, they have to die, and essential commodities that is drugs will not be available in the market. That is one point. My main point is that there is a big rumour in the market that the latest Drug Price Control Order is going to be announced very shortly by the Government and we find that there is a spurt in the stock market of the pharmaceutical companies also. I would like to ask the honourable Minister when the latest Price Control Order is going to be announced by the Government, because there is

a lot of confusion and people are waiting for the latest order. Unless we know when it is coming, there will be a lot of confusion in the market: people will not go in for new formulations and will not be able to market the formulations they already have. I would like to have a specific answer from the honourable Minister.

SHRI R. K. JAICHANDRA SINGH: Hopefully, Madam, within this month.

SHRI JAGESH DESAI: Madam, just now the honourable Minister has said that the amount overcharged is not known. I would like to know from the honourable Minister whether the Comptroller and Auditor-General of India has been requested to go into the accounts of these 12 companies and find out what is the amount overcharged. Secondly, the amount was to be deposited before 3rd August and it appears so far it has not been deposited. I would also like to know whether the Government has told these companies that if the amounts are not paid in time, then penal interest will be charged to them. I would like to know whether that is done or not. Thirdly, what will happen to the amount realized — whether it will go to the Central coffers, or, what is done with that amount? (Interruptions) I would like to know whether the Government will see to it that in future this kind of overcharge is not done and what steps are to be taken by the Government for that purpose.

SHRI R. K. JAICHANDRA SINGH: Madam, this money which has accrued out of the overcharging, will be placed in the Government account known as the DPEA, Drug Prices Equalisation Account. This is what the old DFCO of 1979 had said.

About referring to the Auditor-General, if necessary, we will do it. We have asked the companies to come forward now and deposit this money as per the Supreme Court order. The amount will have to be ascertained by them, that this is the amount. We will check that. If necessary, we will consult about that.

श्री जगदम्बी प्रसाद यादव : मैं मंत्री महोदय से जानना चाहता हूँ कि मंत्री जी बार-बार कह रहे हैं कि कम्पनी स्वयं कितना बकाया है वह जमा कराये और जमा कराने के बाद जाँच करायेंगे यह ठीक है या नहीं ? सबसे पहले तो मैं यह जानना चाहता हूँ कि जितने पैसे बकाया हैं वे सारे के सारे अधिक दाम लेने के कारण हैं सरकार के पास इसकी कोई जानकारी है ? हम लोगों को अखबारों के द्वारा पता चलता है कि 300 करोड़ रुपये से अधिक इस बारे में बकाया होगा। सरकार के पास बकाया का कोई हिसाब-किताब है और सरकार उसको वसूल करने की कोशिश कर रही है क्या ? दूसरे भाग में मैं यह जानना चाहता हूँ कि जब तक सरकार यह बकाया वसूल करेगी इतनी देर में उनके ऊपर दूसरा बकाया शुरू हो जायेगा, फिर तीसरा शुरू हो जायेगा, वह 300-400 करोड़ हो जायेगा और उसका इंटररेस्ट भी बढ़ता चला जायेगा तो इस तरह से जो हिसाब बढ़ता चला जायेगा उसको साफ करने के लिए कोई रास्ता सरकार निकालेगी ? वह पैसा कंज्यूमर को वसूल होकर आये और कंज्यूमर को उस बीच में जो जीवनीपयोगी दवाएँ हैं वह भी मिलती रहें इसकी कोई व्यवस्था सरकार के द्वारा की गयी है ?

SHRI R. K. JAICHANDRA SINGH: Madam, about the amount overcharged, I have already tried my best to enlighten the House that it is not possible at the present moment to firm up the exact amount. I will just give a reference. I will just mention one or two names. For example, the area where Geoffrey Manners have overcharged, the drugs

for which they are supposed to have overcharged, are Benzethin and Penicillin. In the case of Pfizer, they are Oxytetracycline, PAS and other salts and formulations. In the case of Hoechst, they are Baralgin, Ketone and tetracycline and a number of other drugs. It is not possible for the Government at the present moment, as of now, to say how many tablets or vials have gone into the market during this period. So, we have asked the companies that they either to give it to us or to give must ascertain and they must assert, it to the Supreme Court that this is the amount that they have overcharged. Once they do that, once they quantify that amount, we will go into and check it. In fact, this is the prayer to the Supreme Court. I will just read out the prayer to the Supreme Court:

"It is, therefore, prayed that this hon. Court be pleased to direct the respondents herein to deposit the amount, as per the undertakings given by them, in the Drug Prices Equalisation Account within two weeks from the date of the order and further permit officers of the Union of India to inspect the records of the respondents to verify whether the amount deposited by the respondents herein is true and correct amount and be pleased to pass such order or orders as this hon. Court deems fit and proper in the circumstances of the case."

Therefore, they will have to quantify, and we will check. If necessary, as the hon. Member has said, we will take advice of experts, suggestions of the experts.

THE DEPUTY CHAIRMAN: Question No. 282 withdrawn.

*282. [Withdrawn].

USSR Industries of Gas from HBJ Pipeline

*283. SHRI SHANTI TYAGI:

SHRI CHIMANBHAI MEHTA:†

Will the Minister of PETROLEUM AND NATURAL GAS be pleased to state:

(a) whether it is a fact that 1790 kms of HBJ pipeline will be ready almost on time;

(b) whether it is also a fact that some of the user industries which were proposed to be set up to make use of the gas supplied by HBJ pipeline are behind schedule;

(c) if so, what are the details of such industries; indicating how far they are behind schedule and the reasons for the delay in construction thereof;

(d) what schemes, if any, have been prepared to attract adhoc buyers of the gas in order to optimise the utilisation of the gas and to synchronise the completion of the pipeline with the starting of user industries; and

(e) whether it is also a fact that it is proposed to supply the gas to the power house in Delhi?

THE MINISTER OF STATE OF THE MINISTRY OF PETROLEUM AND NATURAL GAS (SHRI BRAHM DUT): (a) and (b) Yes, Sir.

(c) The three fertilisers plants at Sawai Madhopur, Babrala and Shahjahanpur are now expected to be completed as follows:—

Sawai Madhopur	End—1990
Babrala	Mid—1991
Shahjahanpur	Mid—1991

†The question was actually asked on the floor of the House by Shri Chimanbhai Mehta.