

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

Thursday, the 2nd day of November 2023 / 11th Karthika, 1945
WP(C) NO. 18999 OF 2022 (Y)

PETITIONER:

SMT.X
RESIDENT OF ERNAKULAM (NAME OF PETITIONER SUBSTITUTED) "IN RE
EXORBITANT PRICING OF LIFE SAVING PATENDED MEDICINES" [IS
SUBSTITUTED AS PER ORDER DATED 16.09.2022.]

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF INDIA, ROOM NO. 348; 'A' WING, NIRMAN BHAVAN, NEW DELHI - 110011
2. SECRETARY, DEPARTMENT OF PHARMACEUTICALS, MINISTRY OF CHEMICALS AND FERTILIZERS, GOVERNMENT OF INDIA, 236A, A- WING, 2ND FLOOR, SHASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI - 110001
3. SECRETARY, DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT), UDYOG BHAWAN, NEW DELHI - 110011
4. SECRETARY, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SHASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI - 110001
5. CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADE MARKS, PATENT OFFICE KOLKATA, BOUDHIK SAMPADHA BHAWAN, CP-2 SECTOR V, SALT LAKE CITY, KOLKATA - 700091
6. INDIAN COUNCIL OF MEDICAL RESEARCH, REPRESENTED BY DIRECTOR GENERAL, ANSARI NAGAR, NEW DELHI - 110029
7. ADDL.R7. ADV. RAHUL BAJAJ, 001, SARVAPRIYA VIHAR APARTMENTS, NEW DELHI - 110016. (ADDITIONAL R7 IS IMPEADED AS PER ORDER DATED 02.09.2022 IN I.A.1/2022 IN WP(C)18999/2022).
8. ADDL.R8. ELI LILLY AND COMPANY (INDIA) PVT.LTD., PLOT# 92, SECTOR 32, INSTITUTIONAL AREA, GURGAON - 122001, HARYANA, INDIA [IS SUO MOTU IMPEADED AS PER ORDER DATED 15.03.2023 IN WP(C)18999/2022.]
9. ADDL.R9. NOVARTIS A G, LICHTRASSE 35, CH - 4056 BASEL, SWITZERLAND. [IS SUO MOTU IMPEADED AS PER ORDER DATED 16.06.2023 IN WPC 18999/2022].
10. ADDL.R10. M.RADHAKRISHNAN, S/O.KRISHNAMENON, AGED 74 YEARS, RESIDING AT PRA 45A, MANDANATHU,PALLIPARAMBUKAVU ROAD, TRIPUNITHURA, ERNAKULAM - 682301 [ADDL.R10 IS IMPEADED AS PER ORDER DATED 19.10.2023 IN I.A.3/2023 IN WP(C)18999/2022].

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 3rd respondent to consider and pass orders on Ext.P25 representation within a timeframe to be fixed by this Hon'ble Court.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 19.07.2023 and upon hearing the arguments of SMT.MAITREYI SACHCHIDANANDA HEGDE, former Advocate for the petitioner and now appointed as Amicus Curiae, CENTRAL GOVERNMENT COUNSEL for R1 to R4, SRI.G.SREEKUMAR (Senior advocate), ARUN KUMAR P, THIYYANNOOR RAMAKRISHNAN, AMBIKA RADHAKRISHNAN & KAVYA SURESH for ADDL.R8 and of M/S.ABRAHAM JOSEPH, MARKOS, V.ABRAHAM MARKOS, ISAAC THOMAS, P.G.CHANDAPILLAI ABRAHAM, ALEXANDER JOSEPH MARKOS, SHARAD JOSEPH KODIANTHARA, AIBEL MATHEW SIBY & JOHN VITHAYATHIL, Advocates for Addl.R9, SRI.JAJU BABU (SENIOR ADVOCATE) along with M/S.M.U.VIJAYALAKSHMI & BRIJESH MOHAN, Advocates for Addl.R10, the court passed the following:



DEVAN RAMACHANDRAN, J.

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W.P. (C) No.18999 of 2022

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Dated this the 2nd day of November, 2023

ORDER

Before I answer the issues in this case affirmatively, I am of the view that the opinion of the Government of India, on whether the medicines in question can be made available to the less advantaged sections through alternative methods, is essential.

2. I am persuaded to the afore course because, Smt. Mini Gopinath – learned Central Government Counsel, submitted that most of these medicines are already included in some scheme or the other, under which entitled persons will be able to obtain it at subsidised rates.

3. No doubt, in a perfect world, every patient must be able to access the medicines within their means; but unfortunately, this is not so in the real world. The disparity in the purchasing capacity of patients is so wide in our country that many of them may be unable to do so, without sufficient support from the Governments or such other agencies.

4. Though the petitioner seeks that the Government of India be directed to act under Section 100 of the Patent Act, 1970, I do not propose to answer it at this stage because, it is

well known that the Government normally engages itself under its ambit only in certain specified circumstances and in medical emergencies. In fact, this is also affirmed by Smt.Mini Gopinath.

5. In the afore perspective, I adjourn this matter to be called on 22.11.2023; within which time, the competent Authority of the Union of India will inform this Court as to what is the best alternative that can be offered to the patients of breast cancer in India qua the medicines for its treatment; and whether it has already been included in specified schemes. This information has not been yet made available in any of the counter pleadings, though the manufacturers on record, appear to have come forward with certain suggestions within the purlieus of their Corporate Social Responsibility.

Obviously, therefore, the Government of India will answer the afore query, adverting to the aforesaid offers, as they find them feasible or suitable.

H/o.

Sd/- **DEVAN RAMACHANDRAN,**
JUDGE

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