A.F.R.

Neutral Citation No. - 2025:AHC:86264

Judgment reserved on 15.5.2025

Judgment delivered on 19.5.2025

Court No. 37

Case : WRIT C No. 2373 of 2024

Petitioner : Ms Marion Biotech Private Limited

Respondent : State Of Up And 5 Others

Counsel for Petitioner : Neeja Srivastava,Sr. Advocate,Veerendra Singh

Counsel for Respondent : A.S.G.I.,C.S.C.,R.P.S. Chauhan

Hon'ble Dinesh Pathak,J.

1. Heard Sri V.P. Srivastava (Senior Advocate) assisted by Sri Veerendra Singh and Neeja Srivastava, learned counsel for the petitioner and Sri Manish Goyal (Senior Advocate), learned Additional Advocate General, assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel for the State respondents Nos. 1 to 5 as well as Sri Shashi Prakash Singh (Senior Advocate), Additional Solicitor General of India, assisted by Sri R.P.S. Chauhan, learned counsel for respondents No. 6.

2. Petitioner is aggrieved with the order dated 4.10.2023 (Annexure no.16) passed by the Appellate Authority/Special Secretary Food, Safety and Drug Administration, State of U.P. (respondent no.2), whereby review application dated 4.10.2023 moved on behalf of the Assistant Commissioner (Drugs) has been allowed and previous order dated 11.8.2023 passed in Appeal No.1005 of 2023 under Rule 85(3) of The Drugs and Cosmetics Rules, 1945 (in brevity 'Rules 1945') has been suspended, and the manufacturing company (petitioner) has been directed to produce the certified copies of the

orders passed by different courts of Republic of Uzbekistan and submit a compliance report to the Drug Licensing-Cum-Controlling Authority of Uttar Pradesh and Drug Controller General of India after enforcing the process of Corrective and Preventive Action (CAPA).

3. Facts culled out from the record are that petitioner is a private limited company having its manufacturing unit at B-48-49, Sector 67, District Gautam Budh Nagar. He has been granted drugs license in Form 25 and Form 28 under the provisions of Rules 1945 to manufacture the drug both for indigenous and foreign sales. In pursuant to the license issued by the competent authority, he has been permitted to manufacture tablets, capsules and syrups with various active ingredients. Present writ petition relates to the manufacturing of DOK-1, Max tablets and Syrups having active pharmaceutical ingredients of Paracetamol BP 500 mg, Guaifenesin BP 200 mg and Phenylethrine Hydrochloride BP 10 mg. By letter dated 29.9.2022 (Annexure no.3), he has been permitted to manufacture additional drug item (quantity based) only for the purposes of export. On the information received from the authorities concerned *qua* death of 15 children in Samarkand, Republic of Uzbekistan owing to consumption of DOK-1 Max Syrup, the Joint Inspection Team of Central and State Drug Authorities have conducted several inspections at the factory premises of the petitioner between 27.12.2022 to 12.1.2023 and collected samples of drugs for the purposes of testing and analysis. Subsequently, show cause notice dated 30.12.2022 has been issued to the petitioner, under Rule 85(2) of Rules 1945, as to why his drugs license (Form 25 and Form 28) should not be cancelled/suspended because of violation of the license conditions as enunciated under Rule 74 and 78 of the Rules 1945. Petitioner has filed his reply dated 13.1.2023. However, in the meantime, samples collected by the Joint Inspection Team has been sent for testing and analysis, and its report has been communicated to the petitioner by subsequent notice dated 3.3.2023 (Annexure No.7) and 4.3.2023 (Annexure No.8) with an observation that as per test reports

dated 1.3.2023 and 14.1.2023 respectively sent by Government Analyst, Regional Drugs Testing Laboratory (RDTL), Chandigarh, samples are found *"Not of Standard Quality*" for the reasons that samples contains DI Ethylene Glycol (DEG) and Ethylene Glycol (EG) more than required standard.

4. Drugs Licensing-Cum-Controling Authority U.P. has cancelled the drugs licence of the petitioner (Form 25 and Form 28) by order dated 13.3.2023 (Annexure no.9) without waiting period of 28 days as enunciated under Section 25 (3) of the Drug and Cosmetics Act 1940 (in brevity Act, 1940). Having been aggrieved with the order dated 13.3.2023, petitioner has preferred an appeal dated 1.6.2023 under Rule 85 (3) of Rules 1945. Appellate Authority (respondent no.2) has partly allowed the appeal, with the assistance of departmental team constituted for this purpose, vide order dated 11.8.2023 (Annexure no.13) and revived the drugs license of the appellant (petitioner) except the manufacturing of drugs wherein Propylene Glycol (P.G.) are permitted to be used. In pursuance of the appellate order dated 11.8.2023, Drug Licensing Cum Controlling Authority U.P. has issued permission letter dated 14.9.2023 (Annexure no.14) for manufacturing the drugs excepting those wherein Propylene Glycol (P.G.) is a required ingredient. At later stage, Assistant Commissioner (Drugs) Headquarters, Food Safety and Drug Administration, U.P., Lucknow, has filed review application dated 4.10.2023 against the appellate court's order dated 11.8.2023. Appellate Authority (respondent no.2) has allowed the review application and suspended the order dated 11.8.2003 passed in Appeal No. 1005 of 2023 with a direction that manufacturing company (petitioner) shall produce the certified copies of the orders passed by different courts of Uzbekistan and submit a report to the Drugs Licensing and Controlling Authority, U.P. and Drug Controller General of India after implementing the process of Corrective and Preventive Action (C.A.P.A.), vide order impugned dated 4.10.2023, which is under challenge before this Court.

5. Learned counsel for the petitioner submits that:-

5(i) The appellate authority, under Rules 1945, has inherent lack of jurisdiction to review its previous order dated 11.8.2023, inasmuch as neither in the Act 1940 nor in the Rules 1945 there is any power conferred on appellate authority to review its order. Power of review cannot be exercised without any statutory provision. It has to be specifically, and by necessary implications, proved under the provisions of law to enable the authority concerned to exercise power of review.

5(ii) Even otherwise, there is no mistake or error apparent on the face of record, or discovery of any new or important material or evidence which despite due diligence was not within the knowledge of the party seeking review or for any other sufficient reason warranting the review of the previous order passed by appellate authority. In support of his submission, learned counsel for the appellant has placed reliance upon the judgment of **Naresh Kumar and Others Vs. Government (N.C.T. of Delhi), (2019) 9 SCC 416; Patel Narshi Thakershi and Others Vs. Shri Pradyuman Singhji Arjun Singhji (1973) 3 SCC 844; Order passed by the Punjab and Haryana High Court in the case of Manas Medicos Mansa through its Proprietor Chaman Lal Vs. State of Punjab and Others, 2010 SCC Online P&H 5184.**

5(iii) It is next submitted that once the appellate authority has decided the appeal on merits under Rule 85(3) of Rules 1945, it become *functus officio* from the date of order passed in the appeal, inasmuch as appellate order became final between the parties subject to remedy available in the statute and he has inherent lack of jurisdiction to review his previous order.

5(iv) Learned counsel for the petitioner has also laid emphasis on the provision enunciated under Section 25(3) of the Act 1940, wherein 28 days' time has been accorded to the aggrieved person (manufacturer) to file any objection along with relevant documents against the report of

analyst. In the present matter, as per submission advanced by learned counsel for the petitioner, statutory period has not been exhausted and *sans* opportunity to file objection, petitioner's drug license has been cancelled.

5(v) It is next submitted that review order under challenge dated 4.10.2023 has been passed *sans* opportunity of hearing accorded to the petitioner, inasmuch as review application was filed on 4.10.2023 and it has been allowed on the same day, vide an *ex parte* order.

6. Per contra, learned counsel for the respondents has contended that -

6(i) In the report of Government Analyst (R.T.D.L.), Chandigarh, substance of Glycol has been found more than the permitted degree which is disastrous for the health of children. Section 4 of the Act 1940 is charging section wherein presumption is drawn as to the poisonous substance. He has drawn attention of the court to Chapter IV of the Act 1940, especially, Section 16, which lays down standard of the quality of the scheduled drugs

6(ii) He has further invited the attention of the court to Sections 17, 17(A) and 17(B) of the Act 1940 and tried to prove that drugs manufactured by the petitioner are substandard and, in the public interest, order of the appellate court has rightly been reviewed.

6(iii) It is next submitted that the provisions of the Act 1940 have an overriding effect over the rules which are subordinate piece of litigation, therefore, remedy to file review is always available to the party concerned (Authority) in case order has been passed in violation of provisions of Act 1940. Even otherwise, Rule 85(3) of Rules 1945 does not bar to file a review against the appellate order. He has emphasized that legal right enshrined under Article 19(1)(g) read with Article 19(6) of the Constitution of India are not absolute and are subject to right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Therefore, even assuming that there is no power of review, authority

concerned has an inherent jurisdiction to review its order in public interest.

6(iv) Due to false representation of the manufacturing company, the erroneous order was passed by the appellate authority which needed to be corrected. Accordingly, Drug Licensing and Controlling Authority, U.P. has rightly submitted the review application before the appellate authority. The company failed to provide the correct copy of the Inter District Economic Court of Tashkent. It is submitted that it emerge during the discussion that Apex Court of Uzbekistan corrected the earlier decision of Inter District Economic Court of Tashkent dated 13.01.2023, in which the Inter District Economic Court passed an order to destroy all the "DRUGS UNFIT FOR USE" manufactured by the company. The Apex court replaced the word "DRUGS UNFIT FOR USE" with the words "DRUGS UNFIT FOR USE" DOK-1max syrup 100ml" and Ambronol Syrup 15mg/ 5ml, series AAS2201 and AAS2202". The rest of the decision of the Inter District Economic Court of Tashkent dated 13.1.2023 is unchanged. Thus, it was found that the accused company has earlier given misleading presentation stating that the Apex Court of Uzbekistan has banned only two drugs, namely, Dok-1 Syrup and Ambronol Syrup and rest of medicines are allowed. It is also came into notice, during the meeting, that the case is still pending in the courts of Uzbekistan for final decision. In support of his submissions learned counsel for the respondents has relied upon the judgment passed by Hon'ble Supreme Court in **Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and Ors. (1994) I SCC 1; Budhia Swain and Ors. Vs. Gopinath Deb and Ors. (1999) 4 SCC 396; United Indian Insurance Company Ltd. Vs. Rajendra Singh and Ors. (2000) 3 SCC 581; A.V. Papayya Sastry and Ors. Vs. Govt. of A.P. and Ors. (2009) 4 SCC 221.**

6(v) Learned counsel for the respondents has tried to submit that power to prohibit something as *res extra commercium* is always a legislative policy,

therefore, authorities under their jurisdiction conferred through legislation can examine the correctness of previous proceeding which are damaging and against the provisions of law. In support of his submission, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Internet and Mobile Association of India Vs. Reserve Bank of India, (2020) 10 SCC 274.**

7. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of record, It is manifest that the issue involve in the instant writ petition lies in a narrow compass as to "whether appellate authority under Rule 85(3) of the Rules 1945 has got jurisdiction to review his previous order dated 11.8.2023 passed in Appeal No. 1005 of 2023, in absence of any statutory provision for review, and became *functus officio* after exercising its appellate jurisdiction."

8. Learned counsel for the petitioner has hammered the order impugned for want of jurisdiction of the appellate authority to revisit his earlier order and submits that once the appeal is decided finally under Rule 85(3) of the Rules 1945, the appellate authority become *functus officio* and he cannot entertain any application in the nature of review to decide the question involve in the matter afresh. However, learned counsel for the respondents has contended that appellate authority under the statute can rectify his order at any time, in case he feels that the order has been passed on incorrect facts, therefore, he cannot be considered as a *functus officio*. In view of the point involved in the instant matter, as mentioned above, it would be befitting to define the phrase “Functus Officio”. Needless to say that any judge or quasi-judicial authority would be considered as functus officio in the eventuality that he/she has performed his/her duty finally in its official capacity and nothing remains to be decided/considered/revisit on the said subject matter unless there is a legal provision to do so. In the recent judgment of **Orissa Administrative Tribunal Bar Association vs. Union of India and others, 2023 SCC OnLine SC 309**, Hon. Supreme Court has discussed the phrase “functus

officio". The relevant paragraphs of the aforesaid judgment are quoted herein below:-

> *107. P. Ramanath Aiyer's The Law Lexicon (1997 edition) defines the term functus officio as:-*
>
> *"A term applied to something which once has had a life and power, but which has become of no virtue whatsoever One who has fulfilled his office or is out of office an authority who has performed the act authorised so that the authority is exhausted"*
>
> *108. Black's Law Dictionary (5th edition) defines the term as follows*
>
> *"Having fulfilled the function, discharged the office or accomplished the purpose, and therefore of no further force or authority an instrument, power, agency, etc. which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect*
>
> *109. The doctrine of functus officio gives effect to the principle of finality. Once a judge or quasi-judicial authority has rendered a decision, it is not open to her to revisit the decision and amend. correct clarify, or reverse it (except in the exercise of the power of review, conferred by law) Once a Judicial or quasi-judicial decision attains finality, it is subject to change only in proceedings before the appellate court*
>
> *110. For instance, Section 362 of the Code of Criminal Procedure 1975 provides that a court of law is not to alter its judgment once it is signed*
>
> *"362 Court not to alter judgment. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*
>
> *111. In Hari Singh Mann v. Harbhajan Singh Bajwa35, this Court recognized that Section 362 was based on the doctrine of functus officio*

70. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error."

112. The doctrine of functus officio exists to provide a clear point where the adjudicative process ends and to bring quietus to the dispute. Without it, decision-making bodies such as courts could endlessly revisit their decisions. With a definitive endpoint to a case before a court or quasi-judicial authority, parties are free to seek judicial review or to prefer an appeal. Alternatively, their rights are determined with finality. Similar considerations do not apply to decisions by the state which are based entirely on policy or expediency.

115. Turning to the present case, the appellants' argument that the Union Government was rendered functus officio after establishing the OAT does not stand scrutiny. The decision to establish the OAT was administrative and based on policy considerations. If the doctrine of functus officio were to be applied to the sphere of administrative decision-making by the state, its executive power would be crippled. The state would find itself unable to change or reverse any policy or policy-based decision and its functioning would grind to a halt. All policies would attain finality and any change would be close to impossible to effectuate.

114. This would impact not only major policy decisions but also minor ones. For example, a minor policy decision such as a bus route would not be amenable to any modification once it was notified. Once determined, the bus route would stay the same regardless of the demand for say, an additional stop at a popular destination. Major policy decisions such as those concerning

subsidies, corporate governance, housing, education and social welfare would be frozen if the doctrine of functus officio were to be applied to administrative decisions. This is not conceivable because it would defeat the purpose of having a government and the foundation of governance. By their very nature, policies are subject to change depending on the circumstances prevailing in society at any given time. The doctrine of functus officio cannot ordinarily be applied in cases where the government is formulating and implementing a policy.

115. In the present case, the State and Union Governments' authority has not been exhausted after the establishment of an SAT. Similarly, the State and Union Governments cannot be said to have fulfilled the purpose of their creation and to be of no further virtue or effect once they have established an SAT. The state may revisit its policy decisions in accordance with law. For these reasons, the Union Government was not rendered functus officio after establishing the OAT."

9. In the matter of **Lalit Narayan Mishra vs. State of Himachal Pradesh and others, 2016 SCC OnLine HP 2866,** Division Bench of Hon'ble Himachal Pradesh High Court has held that "Functus officio" is a Latin term meaning having performed his or her office. With regard to an officer or official body, it means without further authority or legal competence because the duties and functions of the original commission have been fully accomplished. "Functus" means having performed and "officio" means office. Thus, the phrase functus officio means having performed his or her office, which in turn means that the public officer is without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

10. Trayner's Latin Maxims, 4th Edn. gives the expression functus officio the following meaning "Having discharged his official duty. This is said of any one holding a certain appointment, when the duties of his office have been discharged. Thus a Judge, who has decided a question brought before him, is functus officio and cannot review his own decision."

11. In Wharton's Law Lexicon, 14th Edn., the expression functus officio is given the meaning: "a person who has discharged his duties, or whose office or authority is at an end."

12. P. Ramanatha Aiyar's Law Lexicon gives the expression the meaning: "A term applied to something which once has had a life and power, but which has become of no virtue whatsoever. Thus when an agent has completed the business which he was entrusted his agency is functus officio."

13. In Black's Law Dictionary Tenth Edition, meaning of functus officio is: "having performed his or her office (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." In other words, the authority, which had a life and power, has lost everything on account of completion of purpose/activities/act.

(Emphasis supplied)

14. Dealing with the execution proceedings, Hon'ble Single Bench of Madras High Court in the matter of **VG Naidu vs. Pahalraj Gangaram, 2016 SCC OnLine Mad 9710** has observed that till the time of limitation subsists, there can be any number of execution applications and if statute, provides power to correct certain account of certain kinds of errors, then the doctrine of functus officio would be subject to such qualification and its applicability would dependent upon the nature and extent of power conferred on the authority functioning. It is further observed that "principle of finality is attached to the doctrine of functus officio, but, there are exceptions to the principle of finality. However, the court's inherent power to set aside the judgment only be invoked in exceptional circumstances to avoid miscarriage of justice. Fraud as is a genuine, albeit limited, exceptions to the important principle of finality of litigation.

(Emphasis supplied)

15. Having considered the nature and scope of *functus officio*, as discussed in preceding paragraphs, in the given circumstances of the present case, it can safely be culminated that appellate authority having been passed the order dated 11.8.2023 became *functus officio*. The moment he passed the order being an appellate authority, his appellate power as enshrined under Rule 85 (3) of Rule 1945 comes to an end subject to further authority or legal competence. Thus, statutory provision of review is essential to authenticate the order passed by the reviewing authority. The case of **Naresh Kumar and Others (supra)** has arisen out of land acquisition proceeding, wherein judgment/award passed by the appellate authority has been reviewed, subsequently, while the award has attained finality. In this backdrop of the facts, the Hon'ble High Court has held that power of review can be exercised only when the statute is provide for the same and in absence of any such provision in the statute concerned, the power of review cannot be exercised by the authority concerned. Similar view was taken by a Full Bench of this High Court in the matter of **Shivraji and Others Vs. Deputy Director of Consolidation and Ors, 1997 RD 562.** Aforesaid matter was arising out of the proceeding under the UP Consolidation of Holdings Act, 1953. The Deputy Director of Consolidation (revisional authority under Section 48 of the U.P.C.H. Act) has reviewed his previous order *sans* any statutory provision of review under the Act. The Full Bench of this Hon'ble High Court has discussed the matter in detail and held that the power of review has to be specifically conferred. The consolidation authorities particularly the Deputy Director of Consolidation is not vested with any power of review of his order and, therefore, cannot reopen any proceeding and cannot review or revise his earlier order. However, as a judicial or quasi-judicial authority, he has the power to correct any clerical mistake or arithmetical error, manifest in his order in exercise of its inherent power as a tribunal.

16. Dictum of Hon'ble Supreme Court in the matter of **Patel Narshi Thakershi and others (supra) decided by Full Bench (Hon'ble Three Judges)** is important as well wherein power of review has not been acknowledged as inherent power of any authority unless statute provides. Relevant Paragraph No. 4 of the aforesaid judgment is quoted hereinbelow:-

> *4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was Liable to be set aside.*

17. Learned counsel for the appellant has placed reliance, as well, on the case of **Mansa Medicos (supra)** decided by Hon'ble Single Judge of Punjab and Haryana High Court, wherein judgment of **Five Judges Larger Bench** of Panjab and Haryana High Court in the case of **Deep Chand vs. Additional Director, Consolidation of Holdings, Punjab, Jullunder, 164 P.L.J. 313** has been relied upon in paragraph Nos. 12 and 13, which are quoted hereinbelow:-

> *12. The issue raised before a five-Judge Full Bench of this Court in Deep Chand's case (supra) was as under:-*

"How far the Additional Director, Consolidation, was competent to recall or review his orders on the merits in the absence of any statutory provision conferring such power?"

13. The Full Bench, after analysing the gamut of judicial precedents on the subject had arrived at the conclusion that power to correct apparent clerical or similar mistakes may be presumed, but only if they do not affect the substance of the decision; otherwise there can be no power of review on the merits except to the extent that the statute confers it and further held that the Additional Director of Consolidation was not empowered to recall or review his earlier erroneous and unjust order whenever it was discerned that the error was due to his own mistaken view on the merits of the controversy.

18. However, it has been held by way of several judicial pronouncements that proposition of law qua *functus officio* and lack of review jurisdiction under the statutes are subject to exceptions of fraud, collusion and misrepresentation. Any court or tribunal has inherent power to recall or review its judgement or order, if said order or judgement is found to be obtained by fraud/forgery, inasmuch as fraud vitiates everything even the utmost solemn proceedings. In the case of **Indian Bank (supra)** Hon'ble supreme court has held that courts in India possess inherent power, specially under Section 151 CPC, to recall its judgement or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceeding, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are power which are resident in all courts, especially all superior jurisdiction. These powers spring not from legislation but from nature and constitution of the tribunal or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its official from indignity and wrong and to punish unseemly behaviour. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amount to an abuse of process of courts,

the courts have been held to have inherent power to set aside an order obtained by fraud practised upon the court.

(**Emphasis supplied**)

19. In the facts and circumstances of the case of **Indian Bank (supra)**, wherein National Consumer Dispute Redressal Commission at Delhi has allowed the claim of respondent (in Civil Appeal before Hon'ble Supreme Court) and same was subsequently reviewed on the application moved on behalf of the appellant, Hon'ble Supreme Court has defined the word 'fraud' and 'forgery' in paragraph Nos. 24 to 32, which is quoted hereinbelow:-

> *24. We may now turn to the next and allied questions; what is forgery, whether forgery is a fraud and whether in the instant case, forgery and fraud are proved?*
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> *25. Forgery has its origin in the French word "Forger", which signifies:*
>
> > *"to frame or fashion a thing as the smith doth his worke upon the anvil. And it is used in our law for the fraudulent making and publishing of false writings to the prejudice of another man's right (Termes de la Ley) (Stroud's judicial Dictionary, Fifth Edition Vol. 2).*
>
> *26. In Webster's Comprehensive Dictionary, International Edition, "Forgery' is defined as :*
>
> > *"The act of falsely making or materially altering, with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability."*
>
> *27. This Definition was adopted in Rembert vs. State, 25 Am. Rep. 639. In another case, namely, State vs. Phelps, 34 Am. Dec. 672, it was laid down that forgery is the false making of any written instrument, for the purpose of fraud or deceit. This decision appears to be based on the meaning of forgery as set out in Tomlin's Law Dictionary.*
>
> *28. From the above, it would be seen that fraud is an essential ingredient of forgery.*

29. Forgery under the Indian Penal Code is an offence which has been defined in Section 463, while Section 464 deals with the making of a false document. Section 465 deals with the making of a false document. Section 465 prescribes punishment for forgery. "Forged document" is defined in Section 470 while Section 471 deals with the crime of using as genuine, the forged document.

30. Forgery and Fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.

31. The Privy Council in Satish Chandra Chatterjee vs. Kumar Satish Kantha Roy & Ors. Air 1923 PC 73, laid down as under:

> *"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who made them- proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused or fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so many a clever and dexterous knave would escape.*
>
> *32. The above principle will apply not only to court of law but also to statutory tribunals which, like the Commission, are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. The Commission under the Consumer Protection Act, 1986 decides the dispute by following the procedure indicated in Section 22 read with Section 13(iv) and (v) of the Act.*

20. In the matter of **S.P. Chengalvaraya Naidu (supra)**, opposite party has obtained preliminary decree by playing fraud on the Court and in this backdrop of the case, Hon'ble Supreme Court has held that non-disclosure of relevant and material document with a view to obtain

advantage amounts to fraud. Relevant portion of paragraph Nos. 5 and 6 are quoted hereinbelow:-

> *5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.*
>
> *6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar.*

21. Hon'ble Supreme Court in the matter of **Budhia Swain and others (supra)** has elucidated the review/recall jurisdiction of tribunal or court and given certain conditions wherein power of review/recall can be exercised. Relevant paragraphs No. 8 and 9 of the aforesaid cited judgment are quoted hereinbelow:-

> *8. In our opinion a tribunal or a court may recall an order earlier made by it if*

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni Vs. Sri Kali Nath AIR 1962 SC 199, it was held :-

> *"The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."*

22. Facts giving rise to the case of **United India Insurance Company Ltd. (supra)** are that claimants have secured compensation from the Motor Accident Claims Tribunal by putting a false case with respect to the

accident. Subsequently, Insurance Company has found the relevant documents to prove that, in fact, no accident took place and award was obtained by playing fraud upon the Court. The review application filed by the Insurance Company was rejected upto Hon'ble High Court, however, Hon'ble Supreme Court has held the maintainability of the review petition on the ground of fraud. Relevant paragraph Nos. 15, 16 and 17 are quoted hereinbelow:-

> *15. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.*
>
> *16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.*
>
> *17. The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice.*

23. Hon'ble Supreme Court has further elucidated the definition of 'fraud' in the matter of **A.V. Papayya Sastry and others (supra)**. Relevant paragraph Nos. 22, 26 and 39 are quoted hereinbelow:-

> *22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.*
>
> *26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.*
>
> *39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior.*

24. In the light of the discussions as made above, now, relevant question would be as to "what fraud/forgery has been committed or misrepresentation has been made by the present petitioner, while obtaining the order dated 11.8.2023 passed by the appellate authority under rule 85(3) of Rules 1945."

25. Learned counsel for the respondents has emphasized the presence of Diethylene Glycol (DEG) and Ethylene Glycol (EG) more than the

permitted degree in the Propylene Glycol (PG) used as solvent in the disputed drug i.e. DOK-1 Syrup and Ambronal Syrup, and deficiency found during the number of investigations conducted by the joint team of State and Central agencies. He has also laid emphasis upon the judgments passed by different courts of Republic of Uzbekistan and try to point out that proper documents have not been filed by the petitioner in this respect. Having considered the allegations made by the learned counsel for the respondents and the counter affidavit filed on behalf of respondents No. 1 to 5 as well as respondent No. 6 and upon scrutiny of the record available on board, it evince that nothing new fact or material or evidence has been brought, which despite due diligence was not within the knowledge of the resondent seeking review, before the appellate authority for the purposes of review of its previous order. Needless to say that deficiency, if any, found during the several investigations of factory premises conducted by the joint team of State and Central authorities between 27.12.2022 and 12.1.2023 was well within the knowledge of the authorities of the department concerned including the appellate authority. Apart from that, presence of **Diethylene Glycol** (**DEG**) and **Ethylene Glycol** (**EG**), more than the permitted degree, was also well within the knowledge of the authorities, inasmuch as the authority concerned has issued notice dated 23.3.2023 and 4.3.2023 to the petitioner based on the result of Government Analyst of RDTL, Chandigarh whereby both the aforesaid substance were found more than the permitted degree. Having considered all these facts qua death of children in Samarkand, Republic of Uzbekistan and the presence of DEG and EG in the solvent viz Propylene Glycol (PG) more than its permitted degree and deficiencies found in the manfacturing plant during the investigations, detailed show cause notice dated 30.12.2022 has been issued to the present petitioner. Aforesaid show cause notice contains the gist of the report dated 27.12.2022 and report dated 29.12.2022. For convenience and ready reference, the

relevant contents of the show cause notice dated 30.12.2022 is quoted hereinbelow:-

कार्यालय खाद्य सुरक्षा एवं औषधि प्रशासन उत्तर प्रदेश,

सेक्टर सी, अलीगंज, लखनऊ।

सं०: ड्रग/5831/5586 लखनऊ दिनांक 30.12.2022

<u>कारण बताओ नोटिस</u>

मेसर्स मैरियन बायोटेक प्रा०लि०, बी- 48-49, सेक्टर-67, नोएडा, गौतमबुद्धनगर (उ०प्र०) को इस कार्यालय द्वारा औषधि निर्माण लाइसेंस संख्याः 01 ऑफ 2010 (फार्म-25) एवं 01/ एस०सी०/पी० ऑफ 2010 (फार्म-28) प्रदत्त है। फर्म द्वारा निर्मित औषधि - Dok-1 Maks Tablets and Syrup (Paracetamol 500mg, Guaifenesin 200mg, Phenylephrine Hydrochloride 10mg) के सेवन से समरकन्द, उज्बेकिस्तान में 15 बच्चों के मृत्यु की प्राप्त सूचना के क्रम में दिनांक 27.12 2022 को श्री विनोद कुमार गुप्ता एवं श्री आशीष कौण्डल, औषधि निरीक्षक (द्वय), सी०डी०एस०सी०ओ०, नार्थ जोन गाजियाबाद, श्री अरविन्द कुमार, सहायक आयुक्त (औषधि), मेरठ मण्डल, मेरठ तथा श्री वैभव बब्बर, औषधि निरीक्षक, गौतमबुद्धनगर द्वारा विवेचना/संयुक्त निरीक्षण किया गया था। विवेचना/निरीक्षण आख्या की एक प्रति फर्म को मौके पर उपलब्ध करा दी गयी थी। विवेचना/निरीक्षण में निम्नलिखित कमियां/अनियमितताएं पायी गयी-

1. For the manufacture of Dok-1 Max Syrup, B.No. DXS2104, the firm had procured propylene glycol from its approved vendor M/s Manali Petrochemical Ltd., Chennai, through supplier M/s Maya Chemtech India Pvt. Ltd., Delhi. Upon review of sales invoice issued by M/s Maya Chemtech, the inspecting team found there is no mention of Lot Number and pharmacopoeia specification of propylene glycol on the supplier's invoice. Further, firm failed to produce copy of manufacturer's COA.

2 For the manufacture of Dok-1 Max Syrup, B.No. DXS2209, the firm was found to have used propylene glycol from an unapproved vender, and had used it in the formulation of finished products. Firm informed the inspecting team that they had tested the propylene glycol as per BP specifications only and had used in their batches. The firm further informed to the inspecting team that they had not tested Propylene Glycol for the impurity of Diethylene Glycol & Ethylene Glycol.

उल्लेखनीय है कि फर्म का दिनांक 29.12.2022 को श्री विनोद कुमार गुप्ता एवं श्री आशीष कौण्डल, औषधि निरीक्षक (द्वय), सी०डी०एस०सी०ओ० नार्थ जोन, गाजियाबाद, श्री ए०के० गुप्ता, सहायक आयुक्त (औषधि), मेरठ मण्डल तथा श्री वैभव बब्बर, औषधि निरीक्षक, गौतमबुद्धनगर द्वारा पुनः संयुक्त निरीक्षण किया गया, निरीक्षण आख्या की एक प्रति फर्म को मौके पर उपलब्ध करा दी गयी थी। निरीक्षण आख्या के अवलोकन से यह विदित होता है कि निरीक्षण के समय निम्नलिखित कमियां/अनियमितताएं विद्यमान थी-

1. The invoice copy of procurement of propylene glycol did not bear any drug licence and the product propylene glycol supplied bears no Pharmacopoeal specifications, batch number etc.

2. No test for the presence of diethyl glycol and ethyl glycol were found performed as per COA of propylene glycol : vide AR no. RM/218/2021 dated 10/05/2021 & AR no. RM/230/2021 dated 21/05/2021 by the firm.

3. As per COA Propylene glycol was supplied by M/S Maya Chemtech, India Pvt Ltd, Khasra no.: 558, siraspur road, libaspur, next to Sri Ganesh Dharam Kanta, North West Delhi-110042,

Manufactured by: M/S Manas Petrochemicals, India, however No COA of supplier or manufacturer was provided by the firm.

4. The approved vendor list of the firm did not bear the name of supplier M/s Maya Chemtech, North West Delhi-110042.

5. Approved analytical chemist was absent at the time of investigation.

6. The thermohygrometer ID No. CI-23 provided in FG store at basement was found not working during investigation.

7. Firm had not provided adequate space for storage of finished goods at the required temperature. On the day of investigation, several batches of finished products viz: Cinepar Tablets B. No. CNT2279, MFD. 08 2022, EXP 07.2028, Ferrofort Capsules, B. No. FFC2204, MFD: 07.2022, EXP: 06.2025, Beldomax Tablets, B. No BDT2201, MFD: 08.2022, EXP: 07.2026 were found kept in corridor stocked for dispatch since long time. There was no record of temperature of the corridor where these batches ware kept. Temperature mapping was not done to identify hot point in FG store.

8. Two rejected materials L-cystine & Calcium Sulphito wore found kept in rejected RM store without any access control & lock & key. No records pertaining to their rejection were provided by the firm.

9. There is no procedure to verify the materials w.r.t. vendor or source at the time of receipt of material in RM ware house. No approved vendor list was found available at the RM receiving bay on the day of investigation.

10. Door interlocking system of Material pass box having ID no. LOR/GF/026 provided for transfer of material to sampling room was found not working.

11. Wall of Empty capsule storage room was observed to have seepage and thus was not maintained in hygienic condition.

12. Thermohygrometer for recording temperature in Approved RM store room was found kept on API drum. The location was not identified after temperature mapping based on worst case situation.

13. No personal protective equipment were provided for various types of solvents kept in approved liquid material store room.

14. The stand of dispensing LAF was found rusted.

15. Only one change room at ground floor was found provided which was without any control of environment and the same was being used for primary gowning for workers working in non critical area as well as for secondary gowning for workers working in core manufacturing area of tablets section, capsules section, liquid section, ointment section as well as oral-granules sachet section. No gowning procedure was found displayed in this change room for different types of gowning.

16. No provisions were found available for garment change just before entry to respective manufacturing section. Further, the sink & drain in this change room were not provided with GMP drain & not maintained in hygienic condition. The door of this change room was also found rusted.

17. In oral liquid manufacturing section, entry to bottle cleaning room was directly through decartoning room. No separate airlock was provided for entry to bottle cleaning room.

18. Approved current layout was not displayed in respective locations in manufacturing block.

19. Firm has not provided coving at wall to wall joints & wall to roof joints in all the manufacturing area.

20. Epoxy flooring provided in oral liquid filling & manufacturing rooms was found broken at several places, thus making it difficult to clean.

21. Drain point provided in liquid manufacturing room was not having any identification & periodic cleaning record were also not available.

22. No separate washing area was found provided for cleaning of liquid section filling assembly/machine parts.

23. Preventive maintenance and qualification status for critical equipments like liquid manufacturing tank, holding tank, bottle cleaning machine, bottle filling machine etc was not found available.

24. Criteria/record for change/destruction of pads of filter press at the time of product change over cleaning in liquid section were not available.

25. In tablet manufacturing section, view glass was found broken in tablets granulation room. Differential pressure manometer in granulation section was also found not working. No air supply & retum was found provided in tools room. 'No magnehelic gauge was found provided in granules quarantine room. The differential pressure in Tablet compression-I was observed out of limit observed as -2 pascal against a limit of -5-20 pascal.

26. It was observed that firm has provided Tablet compression-IV room within the tablet coating area in form of a cubicle. The door of this compression-IV room was directly opening in the coating room. There was no differential pressure display in compression-IV room. Further the compression-IV room and coating room were found supplied with the same AHU. Thus there is a risk of cross contamination.

27. Various equipments were found kept in tablet manufacturing area without any cleaning status.

28. FBD bowl was found kept in coating room in idle condition which was making the coating room congested.

29. Tablet inspection machine room was full of containers & making the room congested.

30. In Blister room, the epoxy was found broken. The differential pressure of this room was found out of specified limit.

31. No dust extraction system was provided in tablets granulation room, Capsules manufacturing room and oral granules powder manufacturing room.

32. The ointment manufacturing room, ointment filling room, oral granules manufacturing room, and Alu-Alu blister packing room provided at second floor were directly opening into a common corridor and the differential pressures of these rooms were found out of specified limits.

33. Floor epoxy in Oral powder granules manufacturing room was found broken making it difficult to clean.

34. Capsules manufacturing room walls were observed with seepage."

26. Drug Licensing-cum-Controlling Authority, UP, while passing the drugs licence cancellation order dated 13.3.2023, has reiterated and considered the contents of show cause notice, as mentioned above, and the report of the Government Analyst as well. Appellate authority, while passing the order dated 11.8.2023 under Rule 85(3) of the Rules, 1945 which has been sought to be reviewed, has reiterated, as well, the contents of the show cause notice dated 30.12.2022 and the reply submitted by the petitioner firm, and two other grounds which were taken by the Drugs

Licensing-cum-Controlling Authority, U.P., in its order dated 11.8.2023. It is apposite to mention that appellate authority has constituted a departmental committee to assist him in deciding the appeal. Both the parties were heard at length. Having considered the report submitted by the departmental committee and the submissions made by both the parties, the appellate court has partly allowed the appeal, vide order dated 11.8.2023, with an observation that excess presence of Diethylene Glycol (DEG) and Ethylene Glycol (EG) in Propylene Glycol (PG) solvent used in manufacturing of drug can be hazardous. It has been further observed that except the aforesaid deficiency, no other deficiency has been found in the quality of the drugs manufactured by company. In this backdrop of the facts, the appellate authority has permitted the petitioner to retain his drugs licence except manufacturing those drugs wherein solvent Propylene Glycol (PG) has been permitted to be used.

27. It appears that, at later stage, a review application has been filed on the same set of facts/grounds which were already considered by the appellate authority in its order dated 11.8.2023. Surprisingly, entire content of the review application dated 4.10.2023 has been verbatim reiterated in the review order dated 4.10.2023, which evince that review order has been passed on the date of filing of the review application itself sans opportunity of hearing accorded to the petitioner and without discussing the grounds on which previous order 11.8.2023 could be reviewed by the appellate Authority. In the review application as well as the review order dated 4.10.2023, authority concerned has reiterated the shortcomings found during the investigation, substandard quality of the manufactured drugs, gist of the inspection report prepared by the joint team of State and Central agencies, gist of the report submitted by the Government Analyst of R.D.T.L., Chandigarh, and the judgement passed by different courts of Republic of Uzbekistan pertaining to the incident of death of 15 children. In paragraph no. 11 of the order dated 4.10.2023, it has categorically been mentioned that drugs license of the petitioner has

been cancelled on the basis of the report submitted by joint inspection team conducted by the State and Central agencies; it would be befitting to revive the drugs license of the Firm after implementing the process of C.A.P.A. (Corrective and Preventive Action) by the company and it should be evaluated and scrutinised by the State Drugs Controlling Authorities and the officials of C.D.S.C.O. It appears, *prima facie*, that basis of the review ultimately rests upon the contents of paragraph no.11 of the order dated 4.10.2023, which is nothing but a personal whims of the authority concerned, who wants to review the order dated 11.8.2023 passed by the appellate authority. Having scrutinised the averment made in the counter affidavits, review application and the order passed on the review application, I did not find any such ingredient which comes within the definition of fraud/forgery or collusion or misrepresentation. Facts with respect to the death of 15 children in Samarkand, Republic of Uzbekistan, presence of deficiencies at the time of several inspections conducted by joint team of the State and Central authorities and substandard drugs manufactured by the petitioner's company was well within the knowledge of the respondents since inception, while his factory premises was subjected to inspection. Other than these three elements emanated from the record, no other element has been demonstrated by the respondents glaring forgery at the part of the petitioner.

28. So far as the judgement passed by different courts of Republic of Uzbekistan is concerned, I am sceptical of the submission advanced by learned Senior Counsel for the respondents that petitioner has committed any fraud or misrepresentation while submitting the judgement passed by different courts of Republic of Uzbekistan. He has laid emphasis on the third point of paragraph No. 7 of order dated 11.8.2023 and tried to submit that the petitioner (delinquent firm) has misled the appellate authority with respect to the judgment passed by the Supreme Court of the Republic of Uzbekistan. He has pointed out that petitioner furnished information that only two batches of two drugs, namely, DOK-1 Max

Syrup and Ambronol Syrup were banned by the Supreme Court of the Republic of Uzbekistan and remaining drugs were not prohibited. For convenience, point No. 3 of paragraph No. 7 is quoted hereinbelow:-

> *उनके द्वारा बताया गया कि उज्बेकिस्तान गणराज्य के मा० उच्चतम न्यायालय द्वारा प्रकरण में केवल Dok–1 Max Syrup एवं Ambronol Syrup के दो बैचों को प्रतिबन्धित किया गया। इसके अलावा उनके द्वारा निर्मित किसी अन्य औषधि को प्रतिबन्धित नहीं किया गया है। उनके द्वारा यह भी बताया गया कि उनके निदेशकों के विरूद्ध की गयी एफ०आई०आर० को भी मा० उच्च न्यायालय, इलाहाबाद द्वारा खारिज कर दिया गया।*

29. He has further emphasised that company failed to provide certified copy of the order dated 13.1.2023 passed by District Economic Court of Tashkent, however, subsequently, officials of the Central and State departments came to know that Apex Court of Republic of Uzbekistan has corrected the earlier decision of Inter-District Economic Court of Tashkent dated 13.1.2023 in which Inter-District Economic Court of Tashkent passed an order to destroy “DRUGS UNFIT FOR USE” manufactured by the company. The Apex Court replaced the words “DRUGS UNFIT FOR USE” with words “DRUGS UNFIT FOR USE DOK-1 Max Syrup 100ml and Ambronol Syrup 15mg/5ml, Series No. AAS2201 and AAS2202". The rest of the decision of Inter-District Economic Court of Tashkent dated 13.1.2023 is unchanged. In this backdrop of the facts, he has inferred that accused company has earlier furnished misleading information stating that the Apex Court of the Republic of Uzbekistan has banned only two drugs, namely, DOK-1 and Ambronol Syrup, and rest medicines are allowed. He has also emphasised that the proceeding is still pending consideration in the Court of the Republic of Uzbekistan. Learned Senior Counsel for the State-respondents, while laying emphasis on the point No. 3 of paragraph No. 7 of the appellate order dated 11.8.2023, has contended that the misrepresentation made by the petitioner with respect to the order passed by the Supreme Court of the Republic of Uzbekistan has badly influenced the mind of the appellate authority and under that influence, the appellate authority has passed the order dated 11.8.2023 whereby licence of the

petitioner has been revived under some conditions. In support of his contention, learned Senior Counsel for the respondent had placed reliance upon the judgment of **S.L. Kapoor Vs. Jagmohan and others, (1980) 4 Supreme Court Cases 379 and judgment of House of Lords, Huang vs. Secretary of State of Home Department (H.L.(E))** decided in the year 2007.

30. Close scrutiny of the judgement dated 11.8.2023 and order of review dated 4.10.2023, in the light of the submission advanced by learned Senior Counsel for the respondents pertaining to the decision pronounced by different courts of Republic of Uzbekistan, evince that point number three of paragraph 7 of order dated 11.8.2023 can't be said to be a solitary ground which could influence the mind of appellate authority. Therefore, cited case of **S.L. Kapoor (supra)** and judgement of House of Lords are not applicable in the given circumstances of the present case. Paragraph no.9 of the review order dated 4.10.2023 evinces that in its reply dated 26.3.2023 manufacturing company has filed the decision of order dated 28.4.2023 passed by Hon'ble Supreme Court of the Republic of Uzbekistan whereby certain modification has been made in order dated 13.1.2023 passed by Inter District Economic Court. For ready reference paragraph nos. 9 and 10 of order dated 4.10.2023 is quoted hereinbelow:

> *"9. निर्माता फर्म द्वारा पत्र दिनांक 20.06.2023 के साथ उपलब्ध कराये गये Decision of the Supreme Court's judicial commission on economic cases in cassation proceedings, Dated 28.04.2023 में निम्न निर्णय दिया गया है-*
>
> ***The decision of the court***
>
> *The decision of the Inter-district Economic Court of Tashkent from January 13, 2023 and the decision of the Judicial Committee on Economic Affairs of the Tashkent City Court from February 9, 2023 should be changed.*
>
> *The words "Drugs unfit for use" in the conclusion of the decision of the Tashkent Inter-district Economic Court dated January 13, 2023 are replaced by the words "drugs unfit for use "DOK-1 max syrup 100ml" and "Ambronol syrup 15mg/5ml", "series AAS2201 and AAS2202" be replaced.*
>
> *The rest of the decision of the Tashkent Inter-district Economic Court from January 13, 2023 unchanged.*
>
> *Court Costs shall be borne by the defendant.*

निर्माता फर्म द्वारा प्रस्तुत उपरोक्त अभिलेख में सबसे ऊपर दाहिनी ओर "unofficial translation and decision brief" अंकित है, जिससे स्पष्ट होता है कि निर्माता फर्म द्वारा निर्णय की प्रमाणित प्रति उपलब्ध नहीं करायी गयी है। यह भी उल्लेखनीय है कि निर्माता फर्म द्वारा Inter-district Economic Court of Tashkent from January 13, 2023 and the decision of the Judicial Committee on Economic Affairs of the Tashkent City Court from February 9, 2023 की पठनीय सत्यापित प्रतिलिपि उपलब्ध नहीं करायी गयी है।

10. उज्बेकिस्तान न्यायालय के उपरोक्त निर्णय से यह स्पष्ट है कि निर्माता फर्म को वहां के न्यायालय से आंशिक राहत प्राप्त हुई है तथा निर्माता फर्म को पूर्णतः निर्दोष घोषित नहीं किया गया है।"

31. Thus, it is unequivocally stated in paragraph no.9 of the order dated 4.10.2023 that order of Supreme Court of the Republic of Uzbekistan dated 28.4.2023 was filed alongwith letter dated 20.6.2023. Meaning thereby order dated 28.4.2023 was well within the knowledge of the authorities concern as well as the appellate authority and after considering the order dated 28.4.2023 passed by Supreme Court of the Republic of Uzbekistan, appellate order dated 11.8.2023 has been passed. In paragraph no.10 of the order dated 4.10.2023 reviewing authority has observed that perusal of the aforesaid order passed by court of Uzbekistan reveals that manufacturing firm has obtained partial relief from that court and it has not been fully exonerated. Photostat copy of the order dated 28.4.2023 has been produced before this court by learned Senior Counsel of the petitioner, which reveals that the operative portion of the aforesaid order has been mentioned in paragraph no.9 of the review order dated 4.10.2023. Needless to say that before passing the order dated 11.8.2023, the appellate authority had constituted a committee to assist him in deciding the appeal. The said committee has submitted a detailed report after scrutinising the report submitted by the Government Analyst of RDTL, Chandigarh, the report of the Joint Inspection Committee conducted by the State and Central agencies, reply of the petitioner, as well as several information collected from the Central Government with respect to the incident took place in the Republic of Uzbekistan. In paragraph No. 6 of the order dated 11.8.2023, the Committee constituted by the appellate authority has pointed out several technical issues which are as many as nine in numbers. All the relevant aspects of the matter has been narrated point wise in the report.

32. Assuming arguendo that petitioner has not furnished the correct copy of the order passed by the Supreme Court of the Republic of Uzbekistan, it hardly affects the merits of the appeal which was arising out of the proceeding under the Act 1940 and Rule 1945. I am surprised to see that Indian authorities are trying to validate their proceedings conducted under the Indian law on the basis of judgment passed by the Supreme Court of the Republic of Uzbekistan. Unfortunately, nothing has been pointed out by the contesting respondents as to what procedural flaw has been committed by the Indian authorities while exercising their power under the Act 1940 and Rules 1945 or what fraud or forgery has been committed by the petitioner upon the appellate authority in a proceeding conducted under the Indian law i.e. Act 1940 and Rules 1945. Indian laws relating to drugs are exhaustive and self sufficient code which does not require any validation of the judgement passed by a foreign courts. Premises of the petitioner's factory has been inspected more than once and the samples collected from the factory has been examined by the Government Analyst, as per provisions enunciated in the Act 1940 and Rules 1945. Concerned authorities have delve in deep to examine the manufacturing process of the drugs at the factory premises of the petitioner and the quality of drug, as well, as per legal requirement enunciated under the Act 1945 and Rules 1945. There is nothing convincing, as to what special the State and Central authorities have found in the judgement passed by the foreign courts intending to validate their official duties performed under the Indian law. Nothing special has been demonstrated before this court in the orders passed by different courts of Republic of Uzbekistan except certain observations with regard to the quality of drugs, which have been found unfit for use, and the said observation was subsequently modified to certain extent. How this observation bearing upon the merits of the judgement dated 11.8.2023 passed by the appellate authority, has not satisfactory been explained before this court. Remedy available in the hands of the authorities concerned cannot be permitted to be misused in

such a cavalier manner, sans proper application of mind, to bolster the revisit/review of the previous order. Excess use of DEG and EG in the drug in question manufactured by the petitioner has properly been evaluated by the appellate authority while passing the judgement, therefore, on the same ground, review of previous order is not justifiable. Even, there is no misrepresentation or fraud at the part of petitioner in placing the orders passed by different courts of Republic of Uzbekistan.

33. In this conspectus, as above, I am of the considered view that despite the availability of remedy of review/recall to the authorities concerned, under certain conditions, as permitted under several judicial pronouncements, no case is made out by the respondents to maintain their review application against the order dated 11.8.2023 passed by the appellate authority, who became functus officio after final decision on the appeal. No case of fraud, forgery or misrepresentation has been made out to bolster the order under challenge. The order impugned is illegal, unwarranted under law and without jurisdiction. Existence of such order would prejudice to the right and interest of the petitioner and amounts to miscarriage of justice to him.

34. Resultantly, instant writ petition succeeds and is **allowed**. The order impugned dated 4.10.2023 passed by the reviewing authority is quashed, with no order as to the costs.

Order Date : 19.5.2025
vkg/Sumit K./vinay