

High Court Order on Working Hours of Medical Representatives

Dear Member,

We are pleased to inform you that Indian Drug Manufacturers' Association (IDMA) has recently obtained a significant High Court order from Patna regarding the regulation passed by the Bihar Commission of Labour.

This order pertains to the working hours of Medical Representatives, specifically fixing the duration at 8 hours, inclusive of a lunch break, and restricting working hours until 5 pm. The High Court has directed the government to refrain from implementing this notification for Medical Representatives, taking into consideration the flexibility required in their working hours and the availability of doctors.

IDMA would like to express its sincere appreciation to the following members & their companies for their active participation in this matter:

1. Mr. C I Shetty from Alembic Pharmaceuticals Ltd.
2. Mr. Atul Parab from Alkem Laboratories Ltd.
3. Mr. Jayesh Shah from Sun Pharma Laboratories Ltd.
4. Mr. Ramesh Balgi from USV Ltd.

IDMA & its Advocacy Group takes this opportunity to sincerely thank the following IDMA Members for their support towards this case :

- (1) Micro Labs Ltd.
- (2) USV Ltd.
- (3) Lupin Limited
- (4) IPCA Laboratories Ltd.
- (5) FDC Limited
- (6) Alembic Pharmaceuticals Ltd.

- (7) Alkem Laboratories Ltd.
- (8) Sun Pharma Laboratories Ltd.
- (9) Biological E Ltd.
- (10) Ajanta Pharma Ltd.
- (11) Unichem Laboratories Ltd.

Dear Members, your involvement has been instrumental in achieving this favourable judgment, which we are confident, will greatly benefit all participating companies in their business processes.

The Advocacy Group also thanks the IDMA Secretariat led by Mr. Daara B Patel for their unstinted support and co-operation.

Brief Synopsis about the Case

- 1) IDMA and other Pharmaceutical Companies had filed the above writ application challenging the Notification bearing no. 4635 dated 28.10.2016 issued under the signature of the Joint Secretary, Labour Resources Department, Government of Bihar by which 'Daily Work Timings' of Sales Promotion Employees had been fixed from 9:00 AM to 6:00 PM with 1 hour lunch break from 2:00 PM to 3:00 PM. By the said Notification, it was also notified that any Sales Promotion Employee working beyond the 'Daily Work Timing' would be entitled for payment of Overtime as per Rule 25 of Bihar Minimum Wages Rules, 1951.
- 2) By Order dated 17.07.2017 read with Order dated 26.07.2017, the Hon'ble High Court had been pleased to Stay the operation of the Notification no. 4635 dated 28.10.2016. Thereafter, on 29.11.2019 our case was Admitted and was posted for final hearing.
- 3) During the pendency of the aforesaid case Bihar and Jharkhand Sales Representatives Union (BJSRU) had intervened in the matter and by the Order of the Court they were impleaded as Respondent party.
- 4) On 19.06.2023 the aforesaid writ application was taken up for final hearing. Extensive arguments were advanced from our side and also by the Counsels appearing for BJSRU and the State of Bihar. After hearing the parties at length, the Hon'ble High Court agreed with our point of view and has been pleased to set aside the impugned Notification dated 28.10.2016. Some of the important observations and findings given by the Hon'ble High Court are as follows:

"We are in perfect agreement with the petitioners that the power conferred on the appropriate Government is to make rules for fixing the normal working hours in a day inclusive of intervals and providing for overtime wages, if the employee is subjected to such work beyond the normal working hours. There is no power conferred on the appropriate Government to specify the time of commencement and conclusion of work or provide for the specific time in which interval is provided for lunch."

"We have also to notice that it is not practical to specify a working time for the sales promotion employees, especially in the pharmaceutical industry, since the major part of their work involves interactions with medical practitioners. This often cannot be done during the normal working hours when the medical practitioners would be engaged in treatment of patients and other medical procedures. We have already found that the State Government does not have the power to prescribe the specific time within which the sales promotion employees or any other employee can be engaged by the employer.

On the above reasoning, we set aside the impugned notification dated 28.10.2016 (Annexure-1) to the extent of prescription of a time schedule and direct the State Government to bring out a notification under Section 30, 30-A and 13(a) of the Minimum Wages Act, 1948 read with Section 6(3) of the Sales Promotion Employees (Conditions of Service) Act, 1976 prescribing the normal working day to be of 9 hours with an interval of 1 hour and entitling the employees to overtime wages beyond the time prescribed. We make it clear that till the notification is brought out, the prescription under the Bihar Minimum Wages Rules, 1951 shall apply to the sales promotion employees also, specifically the prescription under Rules 24 and 25.

The writ petition is disposed of."

- 5) From the aforesaid observations and findings given by the Hon'ble High Court it is clear that the Hon'ble High Court has agreed with our point of view that the State Government does not have the power to specify the 'Daily Work Timings' of Sales Promotion Employees and hence it has quashed the

Notification to that extent. It is a huge setback for Medical Representatives in Bihar and it is bound to also have impact on cases pending outside Bihar. It cannot be ruled out that the Medical Representatives through their Association/Union may challenge this decision before the Hon'ble Supreme Court. If that happens, we can take appropriate measures to defend ourselves.

A certified copy of the Order dated 19.06.2023 passed in CWJC No.9237 of 2017 is attached for your perusal.

Thanks & regards,

Daara B Patel
Secretary – General

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9237 of 2017

1. M/s. Indian Drug Manufacturers Association Son of Mr. Daara Bahadur Patel, having its office at 102-B, Poonam Chambers, A wing, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra through its Secretary General, Mr. Daara B. Patel, Son of Mr. Daara Bahadur Patel.
2. Micro Labs Limited, Son of Mr. Bandu Kapade, 27, Race Course Road, Bangalore- 560001, represented by its Senior Vice- President- Human Resource, Mr. Shivaji Kapade, Son of Mr. Bandu Kapade.
3. USV Limited, Son of Mr. Shiv Narayan Shastri, BSD Marg, Station Road, Govandi- 400088, represented by its DGM- Human Resource, Mr. Ravi Shastri, Son of Mr. Shiv Narayan Shastri.
4. M/s. Lupin Limited, Son of Mr. Ram Prakash Saluja, 159, CST Road, Kalina, Santacruz East, Mumbai- 400098, represented by its GM-HR, Mr. Sumit Saluja, Son of Mr. Ram Prakash Saluja.
5. IPCA Laboratories Limited, Son of Mr Bhanwar Lal Jain, 48, Kandivali Industrial Estate, Kandivali (West), Mumbai- 400067, represented by its Joint Managing Director, Mr. A.K. Jain, Son of Mr. Bhanwar Lal Jain.
6. FDC Limited, Son of Mr. Subhash Dalvi, 142-48, S.V. Road, Jogeshwari West, Mumbai- 400102, represented by its General Manager- HR, Mr. Vijay Subhash Dalvi, Son of Mr. Subhash Dalvi.
7. Alembic Pharmaceuticals Limited, Son of Mr. Ishwar Shetty, Alembic Road, Vadodara- 390003, represented by its Sr. Vice- President, Mr. C.I. Shetty, Son of Mr. Ishwar Shetty.

8. Alkem Laboratories Limited, Son of Mr. Chandrakant Parab, Alkem House, Devashish Senapati Marg, Lower Parel, Mumbai- 400013, represented by its DGM-HR, Mr. Atul C. Parab, Son of Mr. Chandrakant Parab.
9. Sun Pharma Laboratories Limited, Son of Mr. Bal Krishna Shah, Acme Plaza, Andheri Kurla Road, Andheri East Mumbai- 400059, represented by Mr. J.B. Shah, Son of Mr. Bal Krishna Shah.
10. Biological E Limited, Son of Mr. N. Veera Reddy. 18/1 and 3, Azamabad, Hyderabad- 500020, represented by its Sr. Vice President- Legal, Mr. N. Eswara Reddy, Son of Mr. N. Veera Reddy.
11. Ajanta Pharma Limited, Son of Mr. Chinubhai Shah, Ajanta House, 98, Government Industrial Area, Charkop, Kandivali (West), Mumbai- 400067, represented by its Sr. G.M.- Legal and Company Secretary, Mr. Gaurang Shah, Son of Mr. Chinubhai Shah.
12. Unichem Laboratories Limited, Son of Mr. Keshav Gore, Registered and Corporate Office- Unichem Bhawan, Prabhat Estate, S.V. Road, Jogeshwari (West), Mumbai- 400102, represented by its DGM- HR and ER, Mr. Sunil Gore, Son of Mr. Keshav Gore.

... .. Petitioner/s

Versus

1. The Government of Bihar through the Principal Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
4. Bihar Jharkhand Sales Representative Union, Road No. 1E, Rajendra Nagar, Patna- 800016.
5. Devashish Roy, Son of Late Dilip Kumar Roy General Secretary, Bihar Jharkhand Sales Representative Union, Road No. 1E, Rajendra Nagar, Patna- 800016.
6. Manoj Choudhary, Son of Krishna Kant Choudhary Treasurer, Bihar Jharkhand Sales Representative Union, Road No. 1E, Rajendra Nagar, Patna- 800016.

7. Shashi Prakash, Son of Late Harihar Nath Shrivastav Secretary, Bihar Jharkhand Sales Representative Union, Road No. 1E, Rajendra Nagar, Patna- 800016.
8. Center of Indian Trade Union a registered central trade Union, having its office at B T Randive Bhawan, 13-A, Rouse Avenue, New Delhi and local office at Jamal Road, P.S. Kotwali, Town and District Patna through its Secretary, Bihar State Committee Anupam Kumar, Son of Late Surendra Prasad, resident of Village Baur, P.S. Ghanshyampur, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
Mr. Rajiv Kumar Singh, Advocate
Mr. Indrajeet Bhushan, Advocate
For the Respondent/s : Mr. Raghwendra Kumar, SC-22

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-06-2023

The writ petition is filed by an Association of Drug Manufacturers and 11 pharmaceutical companies. The challenge is against a notification issued by the State of Bihar produced as Annexure-1. The notification is issued under sub-Section (3) of Section-6 of the Sales Promotion Employees (Conditions of Services) Act, 1976 (for brevity “Act of 1976”) read with sub-

Section-1(a) of Section-13 of the Minimum Wages Act, 1948 (for brevity “Act of 1948”). The notification prescribes 8 hours working day for the Sales Promotion Employees; the commencement and conclusion of which is also specifically notified as 09.00 A.M. to 06.00 P.M, with a lunch break between 02.00 P.M. to 03.00 P.M. The notification further provides that the Sales Promotion Employees working in excess of the time schedule or on the weekly day of rest will be entitled to over time payment at the rates prescribed in Rule 25 of the Bihar Minimum Wages Rules, 1951. We have heard Mr. Alok Kumar Sinha, learned counsel for the petitioners, Mr. Shakti Suman Kumar and Mr. Rajesh Ranjan No. 1, learned counsel for the Centre of Indian Trade Union representing the Sales Promotion Employees and the learned Government Advocate. For the petitioners it was argued based on the specific provisions of the Act of 1976 and the Act of 1948 that there is absolutely no power conferred on the State Government to prescribe the time of commencement of work and its conclusion; which is the prerogative of the employer. The learned counsel representing the trade union, however, would point out that there can be no dispute raised on the fixation of time of work and the

entitlement to overtime. The learned Government Advocate would argue that it was introduced as a welfare measure, especially when the sales promotion employees were put to difficulties by way of work during unearthly hours.

We have first looked up the provisions of the respective enactments placed before us. The Act of 1976 was enacted regulating conditions of service of Sales Promotion Employees engaged in the pharmaceutical industry and those notified under Section 3 of the enactment. The Sales Promotion Employee has been defined as: “A person who is employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both; excluding those employed or engaged in a supervisory capacity, drawing wages exceeding sixteen hundred rupees per mensem; or those employed or engaged mainly in a managerial or administrative capacity. Sub-Section 2 (e) of the definition clause specifically prescribed that all words and expressions used but not defined in the Act shall have the meaning as defined in the Industrial Disputes Act, 1947. Section-6 of the Act of 1976 makes applicable various welfare enactments applicable to the sales promotion employees including the Act of 1948 by sub-section-(3).

The Minimum Wages Act, 1948 by Section 13(1)(a) empowers the appropriate Government to fix the number of hours of work, constituting a normal working day, inclusive of one or more specified intervals; with regard to any scheduled employment with respect to which minimum rates of wages have been fixed under the Act of 1948. Section 30 deals with the power of the appropriate Government to make rules by virtue of which the Bihar Minimum Wages Rules, 1951 has also been brought out. As per Rule 24, the number of hours constituting a normal working day is notified as 9 hours for an adult inclusive of the intervals of rest. Rule 25 also provides for extra wages with respect to overtime work and double the ordinary rate of wages for scheduled employments other than employment in agriculture.

We are in perfect agreement with the petitioners that the power conferred on the appropriate Government is to make rules for fixing the normal working hours in a day inclusive of intervals and providing for overtime wages, if the employee is subjected to such work beyond the normal working hours. There is no power conferred on the appropriate Government to specify the time of commencement and conclusion of work or provide for the specific time in which interval is provided for lunch.

In so far as the specific provision under Section 6(3) of the Act of 1976, the Minimum Wages Act, 1948 is applicable to the sales promotion employees and even if that category of employees is not included in the scheduled employment; the rules applicable to those in the scheduled employment would squarely apply for the category of employees covered under the Act of 1976 also. The State Government as an abundant caution brought out the notification, the power to which can be traced to Section 30 of the Minimum Wages Act, 1948 read with subsection 6(3) of Act, 1976. The provision of eight hours' work as seen from the notification is excluding the interval provided. Hence, inclusive of the intervals, a normal working day for sales promotion employee would constitute 9 hours inclusive of the 1 hour break/interval for lunch. They would also be entitled to the overtime payment at the rate prescribed in Rule 25 of the Bihar Minimum Wages Rules, 1951.

We have also to notice that it is not practical to specify a working time for the sales promotion employees, especially in the pharmaceutical industry, since the major part of their work involves interactions with medical practitioners. This often cannot be done during the normal working hours when the

medical practitioners would be engaged in treatment of patients and other medical procedures. We have already found that the State Government does not have the power to prescribe the specific time within which the sales promotion employees or any other employee can be engaged by the employer.

On the above reasoning, we set aside the impugned notification dated 28.10.2016 (Annexure-1) to the extent of prescription of a time schedule and direct the State Government to bring out a notification under Section 30, 30-A and 13(a) of the Minimum Wages Act, 1948 read with Section 6(3) of the Sales Promotion Employees (Conditions of Service) Act, 1976 prescribing the normal working day to be of 9 hours with an interval of 1 hour and entitling the employees to overtime wages beyond the time prescribed. We make it clear that till the notification is brought out, the prescription under the Bihar Minimum Wages Rules, 1951 shall apply to the sales promotion employees also, specifically the prescription under Rules 24 and 25.

The writ petition is disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

