A Big No to Pharma Freebies

Why in news?

Recently, the Supreme Court has prohibited the freebies given by pharma companies to the doctors.

What is the judgement about?

- In the *M/s Apex Laboratories Pvt. Ltd. vs Deputy Commissioner of Income Tax, Large Tax Payer Unit-II* case, the company was giving out freebies to doctors to create awareness about a health supplement it was manufacturing called Zincovit.
- The Supreme Court dismissed the Special Leave Petition by Apex Laboratories to claim deduction on freebies given to doctors.
- Upholding a decision by the Madras High Court, the Bench said that the act of pharmaceutical companies giving freebies to doctors is clearly 'prohibited by the law'.
- The Court cited and relied upon Regulation 6.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
- The freebies given to doctors cannot be claimed as a deduction under Section 37(1) of the Income Tax Act, 1961.
- The court held that in a situation where patients' trust is reposed in doctors, having prescriptions manipulated by the lure of freebies is immoral.
- The Court was conscious that the cost of such freebies is factored in the cost of medicines sold, in turn driving up their prices and perpetuating a publicly injurious cycle.

What is the case with the U.S.?

- The Court took note of a report issued by the United States Department of Health and Human Services Office called "Savings Available under Full Generic Substitution of Multiple Source Brand Drugs in Medicare Part D".
- Here, it was stated that the beneficiaries could have saved over 600 million dollars in out-of-pocket payments had they been dispensed generic equivalent drugs.
- In the U.S., the Physician Payments Sunshine Act 2010 (Section 6002 of the Affordable Care Act, 2010), compels the manufacturers of drugs, devices, biologic and medical supplies to report to the Centers for Medicare and Medicaid Services, on three broad categories of payments or transfers of value such as meals, travel reimbursements and consulting fees.
- These include expenses borne by manufacturers such as speaker fees, travel, gifts, honoraria, entertainment, charitable contribution, education, grants and research grants, etc.

What remains unaddressed?

- **The issue of retail price-** The uncovered field in this judgment is the sale of medicines at Maximum Retail Price, or MRP.
- Even though the Drug Price Control Order and Drugs and Cosmetics Act are present, there is hardly any action to keep the sale price of medicines under control.
- There is a lack of due and proper investigation into their so-called research and development

costs and keeping their profit margins within a prescribed limit.

What is the way forward?

- The law needs to be amended to compel the manufacturer of drugs to sell at the verified genuine cost that also factors in a reasonable profit margin for each product.
- This must be at a uniform rates throughout the country.
- Classified lifesaving drugs should be sold at cost only or even at subsidised rates.
- This judgment should be debated and applied to other unethical practices and expenditure out of public funds.
- Financial tools such as income-tax provisions can be used for disallowing such expenditure and taxing the same or taxable income in the hands of recipients *viz*. assurances and declarations in election campaigns by political parties by giving away free laptops, waived electricity charges, food grains, loan waivers, etc.

Reference

1. https://www.thehindu.com/opinion/op-ed/a-no-to-pharma-freebies-a-yes-for-public-good/article65609067.ece

