IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4788 of 2015 a/w 4880, 4881, 4883, 4889, 4891 to 4893 of 2015, 6, 7, 19 to 21, 28, 29, 66, 120 to 122, 207, 209 to 214, 216, 219 to 221, 226 to 228, 582, 584, 585, 693, 695 to 697 & 1119 of 2016

Decided on: 02.05.2016

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1. CWP No. 4788 of 2015
Dr. Kuldeep Chand Maria …Petitioner.

Versus

Union of India and others …Respondents.
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2. CWP No. 4880 of 2015
Dr. Ashneel Kumar Makkar …Petitioner.

Versus

Union of India and others …Respondents.
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3. CWP No. 4881 of 2015
Dr. Kishore Kumar Jain …Petitioner.

Versus

Union of India and others …Respondents.
……

4. CWP No. 4883 of 2015
Dr. Vijay Chaudhary …Petitioner.

Versus

Union of India and others …Respondents.

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5. CWP No. 4889 of 2015

Dr. Surinder Singh …Petitioner.

Versus

Union of India and others …Respondents.

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6. CWP No. 4891 of 2015

Dr. Narinder Singh …Petitioner.

Versus

Union of India and others …Respondents.

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7. CWP No. 4892 of 2015

Dr. Bal Krishan Phawa …Petitioner.

Versus

Union of India and others …Respondents.

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8. CWP No. 4893 of 2015

Dr. Vishal Kumar …Petitioner.

Versus

Union of India and others …Respondents.

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9. CWP No. 6 of 2016

Dr. Kailash Parashar …Petitioner.

Versus

Union of India and others …Respondents.

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10. CWP No. 7 of 2016

Dr. Karan Sharma …Petitioner.

Versus

Union of India and others …Respondents.

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11. CWP No. 19 of 2016

Dr. Nalin Kishore …Petitioner.

Versus

Union of India and others …Respondents.

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12. CWP No. 20 of 2016

Dr. Ashok Kumar Sood …Petitioner.

Versus

Union of India and others …Respondents.

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13. CWP No. 21 of 2016

Dr. Nalli Prabhudas …Petitioner.

Versus

Union of India and others …Respondents.

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14. CWP No. 28 of 2016

Dr. Bhajender Singh Mehta …Petitioner.

Versus

Union of India and others …Respondents.

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15. CWP No. 29 of 2016

Dr. Satya Pal Khera …Petitioner.

Versus

Union of India and others …Respondents.

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16. CWP No. 66 of 2016

Dr. Rajive Rai …Petitioner.

Versus

Union of India and others …Respondents.

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17. CWP No. 120 of 2016

Dr. Suresh Sharma …Petitioner.

Versus

Union of India and others …Respondents.

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18. CWP No. 121 of 2016

Dr. Kalpana Virmani …Petitioner.

Versus

Union of India and others …Respondents.

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19. CWP No. 122 of 2016

Dr. Inderjeet Singh Panwar …Petitioner.

Versus

Union of India and others …Respondents.

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20. CWP No. 207 of 2016

Dr. Shashi Paul Sood …Petitioner.

Versus

Union of India and others …Respondents.

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21. CWP No. 209 of 2016

Dr. Prem Lata Nanda …Petitioner.

Versus

Union of India and others …Respondents.

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22. CWP No. 210 of 2016

Dr. Narinder Singh …Petitioner.

Versus

Union of India and others …Respondents.

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23. CWP No. 211 of 2016

Dr. Raman Kumar …Petitioner.

Versus

Union of India and others …Respondents.

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24. CWP No. 212 of 2016

Dr. Roohail Sharma …Petitioner.

Versus

Union of India and others …Respondents.

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25. CWP No. 213 of 2016

Dr. Ajit Paul Jain …Petitioner.

Versus

Union of India and others …Respondents.

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26. CWP No. 214 of 2016

Dr. Vijay Kumar Vohra …Petitioner.

Versus

Union of India and others …Respondents.

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27. CWP No. 216 of 2016

Dr. Bimla Bhardwaj …Petitioner.

Versus

Union of India and others …Respondents.

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28. CWP No. 219 of 2016

Dr. Rajinder Kumar Mangla …Petitioner.

Versus

Union of India and others …Respondents.

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29. CWP No. 220 of 2016

Dr. Peter Desouza …Petitioner.

Versus

Union of India and others …Respondents.

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30. CWP No. 221 of 2016

Dr. Pratibha Sud …Petitioner.

Versus

Union of India and others …Respondents.

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31. CWP No. 226 of 2016

Dr. Bhupinder Singh Bhatoe …Petitioner.

Versus

Union of India and others …Respondents.

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32. CWP No. 227 of 2016

Dr. Rajiv Kundu …Petitioner.

Versus

Union of India and others …Respondents.

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33. CWP No. 228 of 2016

Dr. Vijendra Nath Upadhyay …Petitioner.

Versus

Union of India and others …Respondents.

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34. CWP No. 582 of 2016

Dr. Abhishek Singh Thakur …Petitioner.

Versus

Union of India and others …Respondents.

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35. CWP No. 584 of 2016

Dr. Dharam Singh Rawat …Petitioner.

Versus

Union of India and others …Respondents.

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36. CWP No. 585 of 2016

Dr. Hari Shankar …Petitioner.

Versus

Union of India and others …Respondents.

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37. CWP No. 693 of 2016

Dr. J.C. Kaviraj …Petitioner.

Versus

Union of India and others …Respondents.

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38. CWP No. 695 of 2016

Dr. (Mrs.) Santosh Khanna …Petitioner.

Versus

Union of India and others …Respondents.

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39. CWP No. 696 of 2016

Dr. Naresh Kumar Glodha …Petitioner.

Versus

Union of India and others …Respondents.

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40. CWP No. 697 of 2016

Dr. Satpal Bhangal …Petitioner.

Versus

Union of India and others …Respondents.

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41. CWP No. 1119 of 2016

Dr. Sheila Grace Varghese …Petitioner.

Versus

Union of India and others …Respondents.

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes.

For the petitioner(s): Mr. Vinay Kuthiala, Senior Advocate, with Ms. Vandana Kuthiala, Advocate.

For the respondents: Mr. Ashok Sharma, Assistant Solicitor General of India, with Mr. Ajay Chauhan, Advocate, for respondent-Union of India.

Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. Romesh Verma & Mr. M.A. Khan, Additional Advocate Generals, for respondents-State.

Mr. Bipin C. Negi, Senior Advocate, with Mr. Raj Negi, Advocate, for respondent-Medical Council of India.

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

Mr. Ashok Sharma, learned Assistant Solicitor General of India, filed reply in the open Court in the lead case being CWP No. 4788 of 2015 and stated at the Bar that the reply filed in the lead case be treated as reply in all the writ petitions. His statement is taken on record. Ordered accordingly.

2. Ms. Vandana Kuthiala, learned counsel for the petitioner(s), stated at the Bar that the exercise made by the authorities and the orders made by them were in terms of the directions made by a learned Single Judge of Delhi High Court, which action was subject matter of subsequent writ petitions, being **WP (C) No. 6968 of 2011,** titled as **Indian Radiological and Imaging Association (IRIA) versus Union of India and Anr.** and other connected matters, came to be determined by a Division Bench of the Delhi High Court in terms of judgment, dated 17th February, 2016. Further stated that the judgment, dated 17th February, 2016, made by the Division Bench of the Delhi High Court squarely applies to

the cases in hand and the orders passed by the authorities merit to be quashed. Her statement is taken on record. She has also made available copy of the judgment made by the Delhi High Court in WP (C) No. 6968 of 2011 and other connected matters across the Board, made part of the file.

3. We have gone through the judgment made by the Delhi High Court in batch of writ petitions, lead case of which is WP (C) No. 6968 of 2011 and perused all the writ petitions. The issue involved and the dispute raised before the Delhi High Court is identical to the issue involved in these writ petitions. We are also of the same view, as has been taken by the Delhi High Court in the judgment (supra).

4. It is apt to record herein that the Apex Court in a latest judgment in the case titled as **Neon Laboratories Limited versus Medical Technologies Limited and others,** reported in **(2016) 2 Supreme Court Cases 672,** has directed that every High Court must give due deference

to the law laid down by other High Courts. It is profitable to reproduce para 7 of the judgment herein:

> *"7. The primary argument of the Defendant-Appellant is that it had received registration for its trademark ROFOL in Class V on 14.9.2001 relating back to the date of its application viz. 19.10.1992. It contends that the circumstances as on the date of its application are relevant, and on that date, the Plaintiff-Respondents were not entities on the market. However, the Defendant-Appellant has conceded that it commenced user of the trademark ROFOL only from 16.10.2004 onwards. Furthermore, it is important to note that litigation was initiated by Plaintiff-Respondents, not Defendant-Appellant, even though the latter could have raised issue to Plaintiff-Respondents using a similar mark to the one for which it had filed an application for registration as early as in 1992. The Defendant-Appellant finally filed a Notice of Motion in the Bombay High Court as late as 14.12.2005, in which it was successful in being granted an injunction as recently as on 31.3.2012. We may reiterate that every High Court must give due deference to the enunciation of law made by another High Court even though it is free to charter a divergent direction. However, this elasticity in consideration is not available where the litigants are the same, since Sections 10 and 11 of the CPC would come into play. Unless restraint is displayed, judicial bedlam and curial consternation would inexorably erupt*

> *since an unsuccessful litigant in one State would rush to another State in the endeavour to obtain an inconsistent or contradictory order. Anarchy would be loosed on the Indian Court system. Since the Division Bench of the Bombay High Court is in seisin of the dispute, we refrain from saying anything more. The Plaintiff-Respondents filed an appeal against the Order dated 31.3.2012 and the Division Bench has, by its Order dated 30.4.2012, stayed its operation."*
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> *(Emphasis added)*

5. In view of the above, all these writ petitions are to be disposed of in view of the judgment made by the Delhi High Court in WP (C) No. 6968 of 2011 and other connected matters and the action drawn by the authorities including conducting of examination is to be quashed. Ordered accordingly. The judgment (supra) shall form part of this judgment also. Pending applications, if any, are also disposed of accordingly.

(Mansoor Ahmad Mir)
Chief Justice

(Tarlok Singh Chauhan)
Judge

May 2, 2016
(rajni)