

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.11182 of 2025
Reserved on : 07.09.2026
Decided on : 11.09.2026
Uploaded on: 11.09.2026

Niraj Sharma ...Petitioner

Versus

State of HP and Ors. ...Respondents.

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the petitioner : Ms. Seema Guleria, Advocate.

For the respondent(s) : Mr. Arsh Rattan, Deputy Advocate General, for respondents No.1 to 3/State.

Mr. Manohar Lal Sharma, Advocate, for respondents No.4 and 5.

Mr. Vivek Sharma, Advocate, for respondent No.6.

Mr. Subhash Chander, Advocate, for respondent No.7.

Bipin Chander Negi, Judge

By way of the present writ petition, a challenge has been laid to award dated 25.06.2025, whereby tender in the

¹Whether the reporters of the local papers may be allowed to see the Judgment? *Yes*

case at hand has been awarded in favour of respondent No. 6, despite being not eligible.

2. In June 2025, the respondents had invited an Expression of Interest to outsource manpower to run and manage Jan Aushadhi Generic Drug Store at SLBS Government Medical College and Hospital, Mandi, Nerchowk, Himachal Pradesh, from amongst pharmacists registered with the Pharmacy Council of Himachal Pradesh.

3. With respect to the terms and conditions of the tender document, the petitioner had filed a representation dated 19.06.2025 before the respondents, as according to the petitioner, terms and conditions of the tender were ambiguous. On account of non-consideration of the representation so made, the petitioner had preferred CWP bearing No.10176 of 2025 on 22.06.2025. The said writ petition was dismissed on 25.06.2025 on the ground that the petitioner had participated in the tender process.

4. On 25.06.2025, the tender had been awarded in favour of respondent No.6. Hence the present writ petition wherein the aforesaid award in favour of respondent No.6 has been challenged on the ground that the respondent No.6 did

not fulfil the "experience criteria of minimum 7 years in pharmacy/any government hospital" (Eligibility Criteria No. 2 contained in Annexure P-2, page 14 of the paper-book) as provided in the tender conditions.

5. In the aforesaid backdrop, on 16.07.2025, the Court had passed the following order:

"CWP No.11182/2025 & CMP No.16009 of 2025 Notice confined to respondents No.1 to 5 at this stage. Mr. Sushant Kaprate, learned Additional Advocate General and Mr. Manohar Lal Sharma, Advocate, appear and waive service of notice on behalf of respondents No.1 to 3 and respondents No.4 & 5, respectively.

Respondent No.5 is directed to conduct an exhaustive inquiry into the certificates that have been submitted by the petitioner as well as respondent No.6 with regard to the details of these certificates. The correctness, authenticity and veracity of these certificates shall be gone into after going through the records that are required to be maintained under the law, more particularly, under the HP Shops and Commercial Establishment, Act, 1969, the Pharmacy Act, 1948, the returns that have been submitted for the purpose of taxation and other things, more particularly, all the registers relating to the employment of staff of the respective

clinics/hospitals, wherein the petitioner and respondent No.6 claim to have worked.

Needless to say that the element of salary and its mode and method of disbursement shall also be inquired into. All the authorities, as are required to be associated, are directed to render their unconditional support and assistance to respondent No.5 while conducting such inquiry or else, they shall be deemed to have committed contempt of the orders of this Court. The inquiry report be submitted to this Court in a sealed cover on the next date of hearing. List on 25.07.2025."

6. On 25.07.2025, the inquiry report was placed on record in a sealed cover. On 12.08.2025, CMP No.19068 of 2025 an application preferred by the L-2 in the tender process, for being impleaded in the present petition had been allowed and the L-2 had been arrayed as respondent No.7. Subsequent thereto, on 20.08.2025, the following order was passed:

Respondent No.5, Senior Medical Superintendent, Member Secretary, SLBS Govt. Medical College and Hospital, Nerchowk, District Mandi, H.P., has submitted Inquiry Report in a sealed cover in pursuance to order dated 16.07.2025 passed by this Court in present matter.

Report is opened and taken on record. Parties are at liberty to apply for the copy of the Inquiry Report from the Registry and in such eventuality copy of the Report shall be supplied on payment of usual charges to the applicant party.

Reply(ies) to the petition by the respondents be filed within two weeks, if not already filed. Respondents shall incorporate response to the Inquiry Report, if any, in their reply(ies) and petitioner is also at liberty, if desired so, to file response to the Inquiry Report in rejoinder to the reply(ies) or independent thereof, within two weeks thereafter. List for further orders on 23.09.2025

7. The relevant extract of the inquiry report, in so far as the eligibility of respondent No. 6 is concerned, is as follows:-

Observation of the Committee:-

On the perusal of statements, record and report submitted by the present petitioner, Respondent No. 6, firms who have issued experience certificate to present petitioner and Respondent No. 6 and Drug Inspector, Sunder Nagar, Mandi and Hamirpur before the committee. The committee has observed is as under:-

Sh. Rajat Chauhan i.e. Respondent No. 6.

- 1. As per the report of Drug Inspector Sunder Nagar Distt. Mandi that the firm who have given*

the experience certificate have valid license as per the provision of Drug and Cosmetic Act, 1940 and Rules there under. Sh. Rajat Chauhan is not added as a registered Pharmacist under retail Pharmacist. But, Sh. Rajat Chauhan has worked as an employee of the firm and the experience certificate was given to him by M/s Shree Bala Kameshar Medical Store Chemist and Druggist opposite Civil Hospital Sunder Nagar, Distt. Mandi (H.P) w.e.f. 21.04.2022 to 31.05.2023. Further, M/s Happy Medical Store retail Chemist and Druggist near Shiv Mandir Chukku Paunta Tehsil Sarkaghat, Distt. Mandi (H.P) has authenticated the experience certificate as they have given to Sh. Rajat Chauhan. The record of attendance and salary has been provided which was annexed in the para supra. As per the report of Drug Inspector Hamirpur and statement of M/s Swami Rehmat Clinic opposite Government Sr. Sec. School Lambloo Distt. Hamirpur (H.P) through email that Mr. Rajat Chauhan worked as Intern from 18.10.2022 to 30.11.2022 and further employed as salaried Pharmacist w.e.f. 01.12.2022 to April, 2024. But as per the experience certificate Respondent No. 6 has submitted the experience certificate w.e.f. 01.01.2018 to 31.03.2022. As per the report of Drug Inspector Hamirpur the owner of the above clinic has denied to have issued the experience for the period 01.01.2018 to 31.03.2022 and the

signature on experience certificate are forged signature."

8. To controvert the inquiry report, insofar as the owner of the clinic/ Dr. Arvind Kumar has denied issuance of an experience certificate for the period 01.01.2018 to 31.03.2022 to respondent No. 6, the latter has annexed an alleged telephonic conversation with Dr. Arvind Kumar, wherein according to respondent No. 6 Dr. Arvind Kumar has admitted the issuance of the experience certificate and has categorically asserted that he will not accept his signatures made thereupon. The aforesaid alleged conversation inter-se respondent No.6 and Dr. Arvind Kumar has been placed on record in the form of a pen drive. Necessary certificate in this respect under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 has also been filed along with the reply filed to the writ petition and objections submitted to the inquiry report.

9. Before dealing with the aforesaid objection raised by respondent No.6 suffice it to state that the principle laid down in ***Ramana Dayaram Shetty, (1979) 3 SCC 489*** qua the right of the party issuing the tender (the employer) to "punctiliously and rigidly" enforce the terms of the tender is

well accepted. [***See also Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622***].

Besides the requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. [See ***Tata Cellular v. Union of India, (1994) 6 SCC 651***]. In view of the aforesaid, Eligibility Criteria No.2 contained in Expression of Interest in the case at hand (Annexure P-2, page 14 of the paper-book) i.e "experience criteria of minimum 7 years in pharmacy/any government hospital", for running the Jan Aushadhi Generic Drug Store at SLBS Government Medical College and Hospital, Mandi, Nerchowk, Himachal Pradesh, from amongst pharmacists registered with the Pharmacy Council of Himachal Pradesh needs to be scrupulously adhered to being an essential condition of eligibility and not merely an ancillary or

subsidiary condition with the main object to be achieved by the condition .

10. In pursuance of the procedural directions which were issued on 16.07.2025,(reproduced supra) respondent No.5 had been directed to conduct a detailed inquiry into the certificates that have been submitted by the petitioner as well as respondent No.6. At the inquiry the correctness, authenticity, veracity of certificates submitted were to be gone into after going through the records that are required to be maintained under the law. On 25.07.2025 the inquiry report had been tendered to the court in a sealed cover and forms part of the record of judicial proceedings. Thereafter on 20.08.2025 parties were directed to apply for the copy of the inquiry report from the registry on payment of usual charges and to file response thereto.

11. In the objections filed nowhere has it been alleged by respondent No.6 that the inquiry which has been conducted by the State is vitiated. Moreover in the inquiry the correctness, authenticity and veracity of certificates submitted by respondent No.6 was to be considered in light of records that are required to be maintained under the law, more

particularly, under the HP Shops and Commercial Establishment, Act, 1969, the Pharmacy Act, 1948, the returns that have been submitted for the purpose of taxation, all the registers relating to the employment of staff of the respective clinics/hospitals, wherein the petitioner and respondent No.6 claim to have worked and the element of salary, its mode and method of disbursement were also to be inquired into. Hence it is clear that in the absence of afore-stated contemporaneous record qua employment for a particular period no certificate could have been issued.

12. Documents received through email from Dr. Arvind Kumar (Swami Rehmat Clinic, VPO Lamblu, District Hamirpur) have been placed in the inquiry report as Annexure A-9, page 223 to 253 of the paper-book, and the report of the Drug Inspector, Hamirpur has been placed in the inquiry report as Annexure A-16, page 301 to 340 of the paper-book. From a perusal of the report submitted by the Drug Inspector, Hamirpur, it is evident that Dr. Arvind Kumar (BAMS) is the proprietor of M/s Swami Rehmat Clinic registered under the Clinical Establishment Act. Inside the clinic, a retail drug store is running under the name of M/s Swami Rehmat Medical

Store. The proprietor of the same is Mrs. Ranjana Kumari, wife of Dr. Arvind Kumar, who is also a pharmacist. From the statements of Arvind Kumar and Mrs. Ranjana Kumari recorded by the Drug Inspector, it is evident that no experience certificate for the period 01.01.2018 to 31.03.2022 was issued to Rajat Chauhan (respondent No.6). The said individual, i.e., Rajat Chauhan (respondent No.6), had joined on 01.12.2022 as a salaried employee and had worked up till 09.05.2024. In this regard, supporting contemporaneous record, i.e., attendance record and salary record, had been taken into account by the Drug Inspector, Hamirpur.

13. The objection by respondent No.6 in the case at hand to the inquiry report placed on record is based on an alleged telephone conversation inter-se respondent No.6 and Dr. Arvind Kumar (BAMS) proprietor of M/s Swami Rehmat Clinic. Validity of secretly obtained evidence was considered by the Apex Court in **(2025) 10 SCC page 128, titled, Vibhor Garg Vs. Neha**. Relevant extract whereof reads as follow:

Validity of secretly obtained evidence

43. This Court has often had the occasion to deal with the issue of using illegal and immoral ways to procure evidence against a person without the knowledge of the person. It is often alleged by accused persons that the investigation authorities did not follow legal methods and procedures to obtain the evidence against them. Sometimes recording devices and phone-tapping mechanisms are resorted to for the purpose of collecting relevant evidentiary material. In such cases, the view taken by this Court has been that merely the fact that an evidence was not obtained strictly in accordance with law does not absolutely bar the admissibility of such an evidence. The Court, while appreciating such evidence, may have to tread with caution and be assured about the accuracy and reliability of such evidence but the said evidence cannot be said to be irrelevant and/or inadmissible merely on the argument that it was illegally obtained.

44. In *Yusufalli Esmail Nagree vs. The State Of Maharashtra*, AIR 1968 SC 147 ("Yusufalli Nagree"), a three-judge bench of this Court was dealing with a case of corruption wherein a conversation was secretly recorded by the police by laying a trap and concealing a microphone in the room of the accused. The conversation was recorded on a tape recorder. The admissibility of

this recorded conversation was objected to on the ground that this was recorded without the knowledge of the accused and the accuracy of the conversation recorded on the tape recorded was challenged.

44.1 This Court, speaking through Bachawat, J., rejected these arguments made by the accused. While this Court refused to lend its approval to the police practice of tapping telephone wires and setting up hidden microphones for the purpose of tape recording, it held that the fact that the tape recording was done without the knowledge of the accused is not in itself an objection to its admissibility in evidence because the accused in this case was free to talk or not to talk; his conversation was voluntary and there was no element of duress, coercion or compulsion. It was further observed that the imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 7 of the Evidence Act.

44.2 This Court further observed with respect to the balance to be struck between the relevance and caution while dealing with a tape-recorded conversation as follows:

"6. ... If a statement is relevant, an accurate tape record of the statement is also

relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with."
(underlining by us)

45. In furtherance to the above view came the judgment of this Court in the case of *R. M. Malkani vs. State of Maharashtra*, (1973) 1 SCC 471 ("*R.M. Malkani*"), wherein the validity of a tape-recorded conversation was in question. This Court, while allowing the tape-recorded conversation to be admitted in evidence, observed the following:

"23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is

admissible under section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under section 7 of the Evidence Act."

46. The aforesaid test laid down by this Court has become a locus classicus on the issue of determining the admissibility of a tape-recorded conversation. The three-fold test of relevance, identification and accuracy has to be satisfied before a Court admits a recorded conversation in evidence. However, the fact that the conversation was recorded without the consent and knowledge of the person speaking is not a prohibition on the admissibility of the evidence, as laid down by the Evidence Act and read into the statutory provisions by this Court."

13. However, the secretly obtained evidence (alleged telephone conversation inter-se respondent No.6 and the owner of the clinic) is of no relevance as qua the employment of respondent No.6 for the period 01.01.2018 to 31.03.2022 there exists no contemporaneous documentary record i.e attendance registers, salary records etc.

15. In the aforesaid facts and attending circumstances, the present petition is allowed. Award made in favour of

respondent No.6 is quashed. A Jan Aushadhi Generic Drug Store cannot be permitted to run by a person who does not have the requisite experience, hence respondent No.6 be removed forthwith. The respondents are free to proceed with a fresh tender or award contract in favour of L-2 subject to fulfilment of all requisite terms and conditions by L-2. Pending miscellaneous application(s), if any, also stand disposed.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

11th September, 2026
(Gaurav Rawat)