



**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA**  
**AND**

**THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY**

**Writ Petition (M/B) No. 305 of 2024**

**20<sup>th</sup> August, 2026**

M/s Ratan Medical Store -----Petitioner

Versus

Union of India and others ----Respondents

**Presence:-**

Mr. D.S.Patni, learned Senior Counsel, assisted by Mr. Dharmendra Barthwal, learned counsel for the petitioner.

Mr. Saurav Adhikari, learned Standing Counsel for Union of India.

Mr. Pulak Raj Mullick, learned counsel for the applicant in IA No. 05 of 2025.

**JUDGMENT : (per Mr. Manoj Kumar Gupta C. J.)**

1. The present writ petition has been filed by the petitioner challenging an order dated 09.05.2024, whereby its contract was cancelled; its offer in respect of E-Tender No. GEM/2023/B/4134642 for CGHS WC – DD1, DD2 and DD-3 was withdrawn; and it was debarred for two years from submitting bids for contract with CGHS. The petitioner has also called in question the re-tender of the contract vide advertisement dated 11.06.2024. The petitioner has also prayed for a direction to the respondents to revive its bid; accept Performance Security of value Rs. 51,00,000/- and permit it to supply medicines as per its offer.

2. The facts, in brief, are that respondent no.4, the Additional Director, CGHS, invited online bids through the

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GeM portal for supply of allopathic medicines to three CGHS Wellness Centers situated at Dehradun. The period of contract was three years. The estimated bid value, as specified in the bid document was ₹ 19.37 crores. Clause-10 required the successful bidder to furnish performance guarantee along with unconditional acceptance for supply of medicines to the Wellness Centers, where the bidder was declared as H-I bidder. The performance guarantee was to be equivalent to 5% of the average annual expected business for three years in respect of each Wellness Centre to be allotted to the successful bidder, as specified in Annexure-D. Annexure-D specified the exact amount of performance security in respect of each Wellness Centre. Each bidder had to submit a declaration in Form G, stating inter alia, that in the event the bidder modifies his Bid, or fails to submit performance security before the deadline specified in the 'Scope of Work' document, he will be debarred for a period of two years from being eligible to submit Bids for contracts with CGHS. The relevant part of the Clause-10 and Annexure-D are extracted below:

**"10. PERFORMANCE SECURITY GUARANTEE AND AWARD OF CONTRACT:**

The successful bidder will have to furnish a Performance Security along with unconditional acceptance for supply of medicines to Wellness Centres where the bidder has been declared as H1 bidder. An amount equivalent to 5% of the average annual expected business for three years in



respect of each Wellness Centre to be allotted to him (as per Annexure-D) is to be deposited as performance security in the form of either an Account payee Demand Draft favouring “Pay and Accounts Officer, PAO (NICD)/Banker’s Cheque of Scheduled Commercial Bank or as per Performance Bank Guarantee valid for 60 days beyond all contractual obligations, as per Annexure H. No claim shall be made against Government of India / Additional Director, CGHS, Dehradun / HQ / MSD/ Zone in respect of interest accrued, if any, due on the Performance Security deposit. The Performance Security Guarantee shall be returned to the ALC after completion of 60 days beyond the validity of the contract, on submission of the “No Claim Certificate” at Annexure A and after penalty deduction if any.

If the Performance Security received from the successful bidder is in the form of a Bank Guarantee, it must be ensured by Additional Director that a copy of the BBG is sent to the Bank (email/physical copy), to confer the genuineness of the PBG (as per CVC guidelines OM No. 02-07-01-CTE-30 dated 31/12//2007).

The provisions under the Bid Securing Declaration shall come into force, if :

- a) Performance Security is not deposited within 07 days of unconditional acceptance of offer by the bidder. Relaxation can be given for deposition of Performance Security by another seven days by Additional Director, CGHS, Dehradun, on the written request by the eligible bidder and / or
- b) The contract is not signed by the successful bidder within the maximum of 21 days of unconditional acceptance of offer letter, failing which the offer will be withdrawn.

In case of extension of contract, the Performance Security should be renewed to ensure that it remains valid upto 60 days beyond the validity of extended contract period. The bidder should ensure validity of Performance Security for extended period.”



**Annexure-D**

LIST OF WCs for ALC EMPANELMENT CGHS DEHRADUN WITH PERFORMANCE  
SECURETY AMOUNT FOR EACH WC

| List of WCs for ALC EMPANELMENT CITY DEHRADUN WITH PERFORMANCE<br>SECURETY AMOUNT FOR EACH WC |                                                                                                                                |                                                                         |                                                                                   |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Schedule No.                                                                                  | Name of CGHS WC<br>with code and name<br>of consignee                                                                          | Average Annual<br>expenditure (turnover) in Rs.<br>Overlast 3 years (A) | Performance<br>Security =5% of (A)<br>rounded to next<br>higher thousand<br>(Rs.) |
| CGHS Dehradun                                                                                 |                                                                                                                                |                                                                         |                                                                                   |
| Sch No.1                                                                                      | CGHS WC-DD1,<br>19-20, Navyug<br>Enclave, Milan<br>Vihar, GMS Road,<br>Dehradun-248001<br><br>Dr. Bachan Singh,<br>Sr. CMO I/c | Rs. 84800000                                                            | Rs.4240000                                                                        |
| Sch No.2                                                                                      | CGHS WC-DD2, P&<br>T Colony,<br>Chakarata Road,<br>Dehradun- 248001<br><br>Dr. Rajendra Singh<br>Pal, Sr. CMO I/c              | Rs. 59800000                                                            | Rs. 2990000                                                                       |
| Sch No.3                                                                                      | CGHS WC-DD3, 1<br>Raipur Road,<br>Survey Chowk,<br>Derhadun-248001<br>Dr. Shivani<br>Sharma, SMO I/c                           | Rs. 49100000                                                            | Rs. 2455000                                                                       |

3. The petitioner turned out to be H-1 bidder and accordingly, the department, *vide* its letter dated 13.03.2024, communicated the said fact to the petitioner and required it to submit its acceptance within 7 days. On 16.03.2024, the petitioner-firm communicated its unconditional acceptance. On 19.03.2024, the department reminded the petitioner of its obligation to submit



Performance Bank Guarantee in terms of the bid documents. The petitioner, instead of furnishing the Performance Bank Guarantee, by its letter dated 20.03.2024, disputed the amount for which the Performance Bank Guarantee was required to be furnished. The petitioner contended that the term 'annual average expected business' was nowhere defined in the Government rules as contract value and, therefore could not form the basis to calculate the performance security. According to the petitioner, it ought to have been calculated as per Rule 171 of the GFR. In continuation of the earlier objection, the petitioner submitted another objection on 02.04.2024, and wherein also it raised identical issues. Again on 03.04.2024, the petitioner sent a communication to the Additional Director, CGHS and, in which, he stated that the performance security as per Rule 171 GFR should be 3% of the contract value.

4. The department, by notice dated 04.04.2024, again informed the petitioner that while submitting its bid, it had furnished an unconditional undertaking in Annexure G, that in the event it modifies its Bid after acceptance of its offer or fails to sign the contract or furnish performance security before the deadline defined in the scope of work document, it would be debarred for a period of two years. The petitioner was accordingly called upon to submit its



explanation within three days. Thereafter, the impugned order dated 09.05.2024 was passed debarring the petitioner for two years from being eligible to submit bids for contract with CGHS, on account of its failure to furnish the performance security guarantee in terms of Clause 10 and the unconditional undertaking furnished along with its bid. Consequent upon cancellation of the petitioner's offer, the respondents re-advertised the same work by tender dated 11.06.2024, which is also under challenge.

5. Mr. D. S. Patni, learned Senior Counsel appearing for the petitioner has made two submissions. Firstly, he submits that after the offer of the petitioner was accepted by the department, the petitioner raised the issue relating to the quantum of the performance security guarantee to be furnished, but the department without clarifying the same, has erred in proceeding to cancel the contract. He further submits that the performance guarantee should have been 3% as per Rule 171 of the GFR and that the requirement under Clause-10 for furnishing security at the rate of 5% of the average annual expected business for three years would mean the figure mentioned in Annexure-D divided by 3. It is thus submitted that the ground on which, the offer has been withdrawn and contract has been cancelled, is also not sustainable and based on misinterpretation of Clause-10. The second



contention is that the show-cause notice dated 04.04.2024 was not served on the petitioner and thus the impugned action is in violation of the principles of natural justice.

6. On the other hand, Mr. Saurav Adhikari, learned counsel appearing on behalf of the respondents submitted that the amount, for which the performance security guarantee was to be furnished was clearly indicated in Annexure-D and, as such, there was no question of any confusion. The petitioner participated in the bidding process being fully aware of the amount for which the performance bank guarantee was to be furnished. He further submitted that furnishing of performance security within 7 days, extendable by a further period of 7 days, was an essential condition of the tender, non-compliance of which entailed withdrawal of the offer. Reliance has also been placed on the undertaking dated 14.11.2023 submitted by the petitioner, whereby it had given unconditional undertaking along with the bid that in case, the petitioner fails to sign the contract or to submit the performance guarantee before the deadline defined in the scope of work documents, it would be debarred for a period of two years from being eligible to submit bids for contract with CGHS. It is submitted that since the consequences of non-compliance were specified in the invitation to bids and was followed by an



undertaking given by the petitioner to the aforesaid effect, therefore, the debarment was a necessary consequence of the default on part of the petitioner to sign the contract and to furnish the performance security.

7. We have considered the rival submissions and perused the records.

8. The first question which arises for consideration is the amount which was to be furnished as performance security in terms of Clause-10. The Clause specifically states that the performance guarantee would be equivalent to 5% of the average annual expected business for three years in respect of each Wellness Centre to be allotted to the petitioner, as per Annexure-D. As noted above, the performance security is expressly disclosed in Annexure-D with respect to each Wellness Centre.

9. The reliance placed by the petitioner on Rule 171(1) of the General Finance Rules, 2017 also does not advance its case. Rule 171(1) provides that the Performance Security should be an average of the three to ten percent (3-10%) of the value of contract, 'as specified in the bid documents'. Thus, the Rules does not mandate that performance should be 3%. It prescribes a range of 3% to 10%, with the actual percentage being fixed in the bid documents. In the present case, Clause 10 prescribed



performance security at the rate of 5%, which falls within the range contemplated by Rule 171(1). Consequently, the contention that the performance security ought necessarily to have been 3% cannot be accepted.

10. The further contention of the petitioner that the performance guarantee would be 5% of the amount specified in Annexure-D divided by 3, if accepted, would leave the phrase 'for three years' redundant and therefore, the interpretation given by the petitioner to the aforesaid Clause cannot be accepted. Further, as noted above, the amount was clearly mentioned in Annexure-D for each Wellness Centre and there was no question of any confusion or ambiguity. The petitioner participated in the bidding process with full knowledge of these conditions and submitted an unconditional undertaking that it would submit the performance guarantee within the deadline defined in the scope of work document. We, thus, find no justification on part of the petitioner in raising frivolous dispute and thereby trying to resile from the commitment given by it through its undertaking.

11. During course of hearing of the writ petition, learned counsel for respondents placed on record, for our perusal, the manner in which the department had calculated the 'annual average expected business'. It reveals that the business earned from the three Wellness



Centers in last three financial years, i.e. 2020-21, 2021-22 and 2022-23, was taken into consideration in calculating the annual average expected business. The breakup and the details of the calculation are as follows:

Financial year wise annual ALC expenditure details of 3WC under CGHS – Dehradun.

| WC's | 2020-21   | 2021-22  | 2022-23  | Total     | Average     | PBG 5%  |
|------|-----------|----------|----------|-----------|-------------|---------|
| DD-1 | 145011280 | 88052710 | 21336060 | 254400050 | 84800016.67 | 4240001 |
| DD-2 | 73087925  | 71102440 | 35209280 | 179399645 | 59799881.67 | 2989994 |
| DD-3 | 39578976  | 49858301 | 57865469 | 147302746 | 49100915.33 | 2455046 |
|      |           |          |          |           |             | 9685041 |

12. Learned counsel for the petitioner could not point out any arbitrariness in the manner of calculation of the average annual expected business by the respondents. Moreover, as noted above, the exact figure of the average annual expected business was clearly indicated in Annexure-D, which was part of the bidding documents submitted by the petitioner. Consequently, there was no scope for raising any dispute subsequently with regard to the amount for which the performance security guarantee was to be furnished.

13. As regards service of Show Cause Notice dated 04.04.2024, it is noteworthy that the entire process was conducted online through the Gem portal and, therefore, the notice was served on the petitioner by uploading the same on the Gem portal. Moreover, the notice was also



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sent to the petitioner at its email address given by the petitioner itself in its various correspondences with the department. As such, we are not ready to accept that the Show Cause Notice was not served on the petitioner. Moreover, as noted above, the petitioner had furnished undertaking along with his bid, which is in Annexure-G, whereby it was stated by the petitioner that in case of failure in furnishing the performance security within the deadline defined in the scope of work document, the consequence would be debarment of the petitioner for two years from participating in contract with CGHS. The relevant part of the said undertaking is extracted below:

“  
Annexure G  
BID SECURING DECLARATION  
(To be given on Company/Entity Letter Head)  
To,  
-----  
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-----  
Sub: Bid Securing Declaration.  
Name of Service:- Local Chemist Empanelment Services  
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Sir,  
I/We hereby declare that I/We are aware that if I/We withdraw or modify my/our Bids during the period of validity, or if I/we are awarded the contract and I/we fail to sign the contract, or to submit a performance security before the deadline defined in the “Scope of work” document, I/we will be debarred for a period of two years from being eligible to submit Bids for contract with CGHS.  
(Signature of the Bidder, with Official Seal)”

(emphasis supplied)



14. As we find no illegality in the decision of the respondents in withdrawing the offer and determining the contract, the debarment, which was a necessary consequence of the determination of the contract, also does not suffer from any illegality.

15. The writ petition lacks merit and is accordingly dismissed.

16. Pending application, if any, also stands disposed of.

**(MANOJ KUMAR GUPTA, C. J.)**

**(SUBHASH UPADHYAY, J.)**

Dated: 20.08.2026  
Kaushal