

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.643 of 2015

=====

M/s Jajoo Surgicals Pvt. Ltd. through its Director Vishnu Bhagwan Jajoo Son of-Sri Ram Swaroop Jajoo with office at A/2-304, Subh Labh Residency, Khazrana Square, P.S.-Khazrana, District-Indore (M.P.)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary to the Government, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
2. The Principal Secretary to the Government, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
3. The State Health Society, Bihar through its Executive Director, Parivar Kalyan Bhawan, Sheikhpra, Patna, Bihar.
4. The Government Analyst, Bihar Drugs Control Laboratory, Agam Kuan, Patna.
5. The Drugs Inspector, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajeeva Roy, Adv.

For the Respondent/s : Mr. Ashok Kumar Keshari, AAG-11

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-08-2015

Heard learned counsel for the petitioner and the respondents.

2. The present writ petition has been filed for quashing the Office Order No. 8499 dated 01.12.2014 passed by the Executive Director of State Health Society Bihar by which the petitioner company has been blacklisted for five years and debarred from taking part in any tender invited by the Health Department, Government of Bihar/State Health Society/District Health Society, on the ground that some samples of Absorbent Cotton Wool manufactured by the



petitioner company upon test/analysis were found “Not Of Standard Quality” as reported by the Government Analyst, Bihar, Patna thereby violating Clauses ‘O’ and ‘T’ of the Tender conditions as well as the conditions contained in Clauses 7.2, 7.5, 16.1 (B) and 24.1 of the Rate Contract for having supplied Absorbent Cotton Wool not of standard quality.

3. The issue at hand is a short one. The petitioner-Company participated in a tender for supply of Absorbent Cotton Wool to the State Health Society in terms of Notice Inviting Tender pursuant to which it was awarded rate contract for supply of 500 gram rolls of Absorbent Cotton. Subsequently, it appears that five samples were collected by the Drug Inspector, Patna on 05.07.2011 from the petitioner’s local depot and were sent for test and analysis by the Government Analyst, Drug Control Laboratory, Patna. The report of the Government Analyst dated 22.11.2012 declared that the samples so collected were found to be “ Not Of Standard Quality” in respect of packing and sinking time. Upon receipt of the report of the Government Analyst under the letter of the Drug Inspector, Patna dated 05.01.2013, the petitioner filed its objection dated 25.01.2013 before the Drug Inspector, Patna in terms of Section 25(3) of the Drugs and Cosmetics Act (for short, “the Act”) notifying to adduce evidence to controvert the reports. A request was made to send one



portion of the sample to the Central Drug Laboratory, Kolkata for testing. Without however having the samples further tested by the Central Drug Laboratory, Kolkata, the respondents have taken a decision and passed the impugned order blacklisting and debarring the petitioner.

4. Learned counsel for the petitioner submits that the action of the respondents is wholly arbitrary and illegal being contrary to the provisions of the Act. Section 25(3) of the Act clearly provides that the report of Government Analyst shall be evidence of the facts stated therein that such evidence shall be conclusive. However, this is subject to the right of the person from whom the sample was taken, to notify that he intends to adduce evidence in controversion of the report. In that situation, Section 25(4) of the Act comes into play and the sample of the Drug then requires to be sent for test or analysis to the Central Drug Laboratory, Kolkata. It is submitted that the petitioner has fulfilled the requirements of Section 25(3) of the Act and the authorities were duty bound to have the sample further tested by the Central Drug Laboratory, Kolkata as requested of them. In view of the failure to do so, the report of the Government Analyst cannot be treated as conclusive and consequently blacklisting and debarring the petitioner on the basis of the report of the Government Analyst alone cannot be sustained. Reliance is placed on the decision

reported in (2008) 7 SCC 196 (Medicamen Biotech Limited and Another v. Rubina Bose, Drug Inspector).

5. Heard learned counsel for the State as well as learned counsel for the State Health Society. No counter affidavit has been filed on behalf of the State. The counter affidavit filed on behalf of the State Health Society merely reiterates that the supplies made by the petitioner were found to be “Not Of Standard Quality” in terms of the report of the Government Analyst. It is further submitted on behalf of the respondent Health Society that in any event the petitioner ought to have preferred arbitration in terms of the specific Clause-20 of the Notice Inviting Tender.

6. Having heard the parties and on perusal of the materials on record, this Court finds that the requirements of Section 25(4) of the Act have not been complied with. The objection was filed by the petitioner-company for adducing evidence in controversion to the report of the Government Analyst, and the authorities were then duty bound under Section 25(4) of the Act to have the sample tested by the Central Government Laboratory if the said report was to be treated as conclusive. It is not the stand of the Respondents that such test by the Central Drug Laboratory, Kolkata was carried out. In that view of the matter, the report of the Government Analyst cannot be said to be conclusive and its accuracy remains under cloud. Such

report could not have provided the foundation for blacklisting and debarring the petitioner.

7. In the above facts and circumstances, the impugned order dated 01.12.2014 as contained in Annexure-1 of the writ petition is quashed and the writ petition is allowed. Before parting with the order, it may well be observed that no fruitful purpose would be served in permitting the sample to be sent to the Central Drug Laboratory, Kolkata at this stage, considering that the samples in question having a shelf life of three years have already expired.

8. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

U			
---	--	--	--