

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7523 of 2015

M/s Medipol Pharmaceutical India Pvt. Ltd. through its Branch Manager, Patna Branch, Jaipul Dhanki, Near Kumhrar, P.S. - Agamkuan, Patna - 800007.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health & Family Welfare, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Secretary-cum-Executive Director, Health, Department of Health & Family Welfare, Government of Bihar, Vikas Bhawan, New Secretariat, Bihar, Patna.
3. The Managing Director, Bihar Medical Services & Infrastructure Corporation Ltd. (BMSICL), Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
4. The General Manager (F & A), Bihar Medical Services & Infrastructure Corporation Ltd. (BMSICL), Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
5. The General Manager (Procurement), Bihar Medical Services & Infrastructure Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna-800001, Bihar.

.... Respondents

Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate
Mr. Dineshwar Mishra
Mr. Surendra Mishra,
Mr. Pritish Kumar Lal, Advocates
For the State : Mr. Shashi Shekhar Pd. Sinha, AC to GA 13
For Respondents : Mr. Tuhin Shankar,
(BMSICL) Mr. Sidharth Shankar Pandey,
Mr. Gopal Kumar, Advocates

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-12-2015

The present writ petition has been filed for quashing of order contained in letter No. BMSIC/40025/27-2014/28 dated 06.04.2015 whereby the petitioner-Company has been blacklisted for a period of five years.

2. At the very outset, before entering into the details of merits of the matter, Mr. Y.V. Giri, learned senior counsel for the



petitioner, submits that the impugned order dated 06.04.2015 is unsustainable in law having been passed in gross violation of the fundamental principles of natural justice. It is pointed out that while a show cause notice dated 05.01.2015 was issued in which four charges came to be levelled against the petitioner on the basis of an enquiry report dated 20.08.2014 submitted by a Committee headed by Dr. K.K. Singh, in response to which the petitioner filed its show cause reply dated 15.01.2015 refuting the allegations. The impugned order dated 06.04.2015 finally came to be passed in which, however, a second enquiry report (said to be dated 10.10.2014) submitted by a Committee headed by Sri Anand Kishore was also referred to. It is submitted that the reliance placed upon such second enquiry report in the impugned order without first having been served a copy thereof on the petitioner vitiates the impugned order of blacklisting. It is submitted that even though the second enquiry report predates the show cause notice, the same was not made available and no opportunity in that regard was granted to the petitioner and as such the impugned order in that respect travels beyond the show cause notice.

3. Learned counsel for the respondents appears and has been heard.

4. Having regard to the nature of the aforesaid objection raised on behalf of the petitioner, this Court does not consider it

necessary to go into the detailed merits of the matter.

5. It is well settled that any material sought to be relied upon in order to draw adverse inference must first be supplied and any failure in this regard results in violation of the principles of natural justice vitiating the final order passed. It is evident from the materials on record that even though the second enquiry report has been relied upon in the impugned order of blacklisting, the same has not been made available to the petitioner in terms of the show cause notice issued to it. As such, the petitioner has been denied a reasonable opportunity of being heard in that regard.

6. In the above view of the matter, this Court finds considerable merit in the aforesaid submissions of the petitioner. Accordingly, the impugned order dated 06.04.2015 is quashed with liberty to the respondents to pass orders afresh in accordance with law after supplying a copy of the second enquiry report of the Committee headed by Sri Anand Kishore and after grant of reasonable opportunity to the petitioner. It is made clear that the writ petition is being disposed of without considering the merits of the matter.

7. As regards the oral prayer on behalf of the petitioner for a direction to the Respondents to make payment of the admitted dues in respect of supplies having already been made, this Court makes no observation in this regard in absence of any prayer made in

the writ petition for such relief. Needless to say, it is always open to the petitioner to approach the respondents for appropriate relief in the matter.

8. The writ petition is disposed of in the manner indicated above.

(Vikash Jain, J)

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