

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.337 of 2014

Petitioner :

M/S. Dusap Pharmaceuticals,
represented by its partner, Dr. Sunil
Kumar Kaushal, 34C, Colootola
Street, Kolkata – 700 073

By Advocate :

Mr. A. Lodh Advocate.

Respondents :

1. **The State of Tripura,**
represented by the Commissioner-
cum-Secretary to the Government
of Tripura, Department of Health
and Family Welfare, New
Secretariat Building, Capital
Complex, Agartala, P.O. and P.S.-
Capital Complex, District-West
Tripura.
2. **The Director of Health Services,**
Government of Tripura, Pandit
Nehru Complex, Gurkhabasti,
Airport Road, Agartala, P.O. and
P.S. Capital Complex, District-West
Tripura.
3. **The Member Secretary,**
State Health and Family welfare
Society Gurkhabasti, Agartala, P.O.-
Kunjaban, P.S.- Capital Complex,
District- West Tripura.

By Advocate:

Mr. B. Das, Advocate General.
Mr. J. Majumder, Advocate.

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing & delivery
of Judgment & Order : **22.06.2015**

Whether fit for reporting

:

YES	NO
	√

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

Though in this writ petition number of reliefs have been claimed, at the time of hearing of the petition, Mr. A. Lodh, learned counsel appearing for the petitioner confined his challenge to the order, whereby the earnest money deposited by the petitioner has been forfeited and further the petitioner has been delisted from submitting any tender for all future tenders.

[2] We are not going into the merits of this case at the present stage. The only question we are looking at is whether the proper procedure was followed while passing this order. A show cause notice was issued on 29.04.2014 to the petitioner by the Director of Health Services, Government of Tripura, Agartala. The last 2(two) paragraphs of the show cause notice reads as under:

"You are, therefore, ***asked to explain reasons*** as to why you have ***not executed the supply order*** as per terms & conditions of NIT and why your ***Earnest Money*** will not be ***forfeited*** and the firm would not be ***delisted as per clause No-29 of NIT.***

Your reply should reach to the undersigned within ten(10) days from the date of issue of this letter."

[3] The petitioner company is at Kolkata and the show cause notice was being sent from Agartala. The show cause notice appears to have been sent by speed post. However, according to the petitioner, he received the show cause notice only on 07.05.2014 and he prepared a reply on 10.05.2014 and the same was dispatched by a speed post on 10.05.2014. It was admittedly delivered in the office of the Director of Health Services on 13.05.2015. The impugned order, whereby the earnest money has been forfeited and the petitioner has been delisted

from participating in any tender invited by the Health and Family Welfare Department is concerned, was taken on 22.05.2014. The reply filed by the petitioner has not been taken into consideration on the ground that the same was not received within time.

[4] Though the petitioner has made a clear cut averment that he received the show cause notice only on 07.05.2014, no reply to the same has been filed by the Director of Health Services. Even otherwise, we are clearly of the view that if punitive action in the nature of forfeiting earnest money or delisting any contractor is to be taken, the affected party must be given a reasonable opportunity of putting forth his case. We can take judicial notice of the fact that letters sent from Agartala even by a speed post take a lot of time to reach other parts of the country. The respondents were in possession of all the details but have not care to apprise the Court as to when the show cause notice was actually posted through speed post. Be that as it may, once the reply had been received before the decision had been taken the authority was duty bound to take the reply into consideration before passing the impugned order.

[5] We, therefore, allow this writ petition to the limited extent that the order dated 22.05.2014 is quashed and set aside on the ground that it has been passed without giving an effective hearing to the petitioner.

[6] In view of what has happened earlier, we order that the Director of Health Services, Government of Tripura shall give personal hearing either to any representative of the petitioner within the month of

July, 2015 and thereafter, pass a reasoned order after considering the reply to the show cause notice and any oral submission before the authority. Needless to say, if the order is against the petitioner, he shall be at liberty to approach this Court again.

JUDGE

CHIEF JUSTICE

Sujay / Dipak