

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 206 OF 2015

D.J. Laboratories Private Limited, a registered Company under the provisions of the Indian Companies Act, registered office at 'Jindal House', 169, Jaora Compound, Indore (M.P.), through its authorized signatory Sanat Goyal, S/o Shri Paras Kumarji Goyal, aged 45 years, R/o 192, Siddhipuram Colony, Indore (M.P.).

... Petitioner

Versus

1. State of Chhattisgarh, through the Principal Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Mantralaya, Post and PS Mandir Hasaud, Raipur (C.G.)
2. Chhattisgarh Medical Services Corporation Limited, through its Managing Director, 3rd Floor, Govind Sarang Commercial Complex, Raipur C.G.

... Respondents

For Petitioner	:	Mr. Devershi Thakur, Advocate.
For Respondent 1	:	Mr. B. Gopa Kumar, Dy. Advocate General.
For Respondent 2	:	Mr. C.J.K. Rao, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

23/06/2015

1. The Petitioner is aggrieved by order of blacklisting for two years dated 11.11.2014 and the direction it to take back all supplies of medicines made by it and refund the payments made.
2. Learned Counsel for the Petitioner submits that on 19.6.2014 a show cause notice was issued to it that in some of the 97 batches of the Compound Sodium Lactate Injection supplied by it, fungus had been found raising doubts about the quality, production and supervision in the factory of the Petitioner. The labels also appeared to have been tampered and over pasted. The batch number in the two labels, the manufacturing date and expiry were also different. The Petitioner was asked to show cause why it should not be blacklisted. In his reply dated 25.6.2014, the Petitioner, with regard to three batches in question, reiterated that it had checked the control samples and found it to be of standard quality. It was further stated that fungus growth could take place due to the

damage to bottles during transit or storage. Minor cracks could develop during transit also and in case of IV fluids the solution immediately gets contaminated and it leads to development of fungal growth. A Certificate of Authorisation of the aforesaid three batches showed that they were tested for quality before dispatch. It was denied that the labels on the bottles had been tampered. Simultaneously, it was requested that such bottles with tampered labels be made available to facilitate proper reply by the Petitioner, simultaneously requesting for a personal hearing. The order for blacklisting had been passed without considering the cause shown simply stating that the cause shown was unacceptable. Blacklisting was a serious matter and had wide ranging consequences not only with regard to immediate authorities or agencies which ordered the same and had its consequences far beyond the same affecting the commercial reputation and credibility of the Petitioner in the market generally. It must therefore be done in a fair and reasonable manner displaying full application of mind and consideration of the cause shown.

3. Learned Counsel for Respondent 2 submitted that the impugned order calls for no interference. There is no infirmity in the decision making process. A show cause notice was given and the cause shown has been considered as evident from the impugned order. The impugned order states that the representative of the Petitioner was called and shown the bottles with tampered labels as also fungus and foreign particles in some of the bottles of the batches in question. The request for personal hearing was thus also granted. Having made supplies contrary to the contract and the agreement, the authorities have committed no wrong in asking the entire supplies to be taken back and the payments made to be returned.

4. We have considered the submissions on behalf of the parties.

5. An order of blacklisting primarily pertains to the commercial world. In view of the conduct of a party to the contract, another does not desire to deal with it. The consequences for the person blacklisted undoubtedly are serious. It has also been described as a civil death which actively hinders participation by the

aggrieved in the commercial world and generally affects its commercial reputation having repercussions far beyond the immediate parties. It affects the credibility of the person blacklisted in the market and may even have the effect of driving it out of the market and business as others may be hesitant to deal with it. Having said so, the exercise of jurisdiction under Article 226 of the Constitution with an order for blacklisting, will primarily have to be confined to errors in the decision making process and not the decision itself. It shall not be the jurisdiction of the Court to sit as an appellate authority over the decision taken for blacklisting. But the mere giving of a show cause notice is not an empty formality. The submission of a reply will not suffice for compliance with the principles of natural justice. The final order of blacklisting must be reasoned indicating why the cause shown was not acceptable and the authorities satisfied to blacklist.

6. Reasons in an order passed in exercise of administrative powers has always been considered necessary to control arbitrariness. It ensures that the decision making authority remains within the bounds of its powers, does not take into consideration any extraneous materials and simultaneously does not leave out relevant materials from consideration. If reasons are to be excluded, and mere recital that the cause shown was not acceptable was to suffice, it will become convenient for the authorities where they are unable to meet the cause shown to avoid the same even when they may have no answer to it. Rampant arbitrariness would make a mockery of the rule of law. Though the principle is well settled by numerous judicial precedents we may fruitfully refer to one such decision in (2004) 7 SCC 431(Cyril Lasrado v. Juliana Maria Lasrado) observing as follows :-

“12. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: “The giving of reasons is one of the fundamentals of good administration.” In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording

reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

7. Respondent 2 published a notice inviting tenders on 25.4.2013 for supply of drugs and medicines to Chhattisgarh Medical Services Corporation Limited for the year 2013-14. The relevant drugs are:-

- (1) Ringer Lactate Injection IP (IV)
- (2) Electrolyte P Injection
- (3) Ciprofloxacin 100 ml. (IV)
- (4) Mannitol Injection

8. An agreement was entered between the parties on 4.7.2013 for supply of the above drugs. Clause 8 prescribed that in the event of failure in quality testing apart from rejection of supplies the supplier shall be liable for criminal action and blacklisting. Clause 8 reads as follows:-

"08. The supplies will be deemed to be completed only upon receipt of reports of quality testing of the samples from the testing laboratories . If the samples do not conform to statutory standards, the entire supplies will be rejected and the Supplier asked to take back the stocks at his cost from all the District Drug Warehouses of the Purchaser and/or other supply points within 30 days of receipt of intimation to that effect. Purchaser has the tight to destroy such substandard goods if the tenderer does not take back the goods within the stipulated time. Purchaser shall arrange to destroy the rejected goods within 90 days after the expiry of stipulated period and shall also collect demurrage charges calculated at the rate of 2% per week on the value of the goods rejected till such destruction. The supplier shall also be liable for action under Criminal Law and the appropriate authorities will be informed for initiating necessary action. The supplier shall be blacklisted for the product and no further supplies accepted from him. The supplier shall also be declared to be ineligible to participate in any Tender floated by the purchaser for a period of next 5 years for the product in question. The Purchaser at his discretion may also terminate the Contract and in case of such termination, the Supplier shall be liable for all losses sustained by the Purchaser in consequence of such termination, which may be recovered from the Security Deposit made by the Supplier and/or any other money due or becoming due to him. In the event of such amounts being

insufficient, the balance may be recovered personally from the supplier or from his properties as per the provisions of Law. In case of such termination of Contract, the Supplier shall be blacklisted for all supplies to the Purchaser for a period of 5 Years.”

9. The Petitioner supplied 97 batches of Compound Sodium Lactate Injection IP (500 ml.). Out of the same, it was alleged that in three batches, F13 H015, F13K048, F13K053, fungus was found by the Respondents, apart from pasting of two labels on certain samples. A show cause notice was issued to the Petitioner on 19.6.2014 asking for an explanation why it should not be blacklisted for that reason. The Petitioner submitted its reply on 25.6.2014 denying any presence of fungus in the three batches supplied by it and explaining that sometimes fungal growth may take place in the bottles during transit and storage. Minor cracks could develop during transit leading to IV fluids getting contaminated and consequential development of fungal growth. It also enclosed a Certificate of Authorisation showing that three batches inter-alia were tested for quality before dispatching. Denying tampering of the labels on the bottles, it requested for sample of such bottles at its cost after which it would submit its explanation, urging that it had maintained very strict standards. It also requested for a personal hearing.

10. It appears that after cause was shown on 25.6.2014, Respondent 2 without consideration of the same made up its mind on 7.8.2014 to blacklist the Petitioner and in furtherance of the same issued directions that the Petitioner was required to take back the supplies made by it and refund payments made. The order makes no reference to the cause shown or personal hearing granted. The Petitioner had denied the allegations in the show cause notice. The impugned order was only a sequel to the same fulfilling the formality of mentioning that the cause shown had been considered and found unacceptable. No reasons have been mentioned why the cause shown did not merit consideration for displaying application of mind to the same. The order does not mention on what date personal hearing was granted and what were the contentions raised by the Petitioner. The order makes a bald statement that the

defective samples were shown to the representative of the Petitioner. It falls completely short of what is meant by personal hearing, a bilateral exercise. At this stage we are not concerned with the acceptability or unacceptability of the cause that may have been shown but the manner of its consideration only. It is trite law that justice must not only be done but it must be seen to be done. In the present case the decision making process does not inspire any confidence of fairness in the decision making process.

11. We have already referred to clause 8 of the agreement that supplies were to be accepted by the Respondent after satisfaction of its quality. The opening paragraph of the impugned order dated states that 97 batches supplied by the Petitioner had been got tested through an NABL Accredited laboratory and after being satisfied by its quality, the Respondent had forwarded it for distribution to the health centers. This aspect has not been discussed in the concluding part of the impugned order and is considered relevant in view of the denial by the Petitioner of the allegations.

12. Justice is rooted in confidence as held in (2010)13 SCC 247 (Oryx Fisheries (P) Ltd. Vs. Union of India). The actions of the Respondents must not only appear to be fair but also must be fair. We are therefore unable to sustain the impugned order dated 11.11.2014 in its present form as it suffers from gross infirmity in the decision making process before blacklisting. It is accordingly set aside.

13. Nothing prevents the Respondent 2 from proceeding afresh in accordance with law and from the stage of the cause shown by the Petitioner on 25.6.2014 and passing fresh orders to its satisfaction but in accordance with law.

14. The Writ Petition is allowed.

**Sd/-
(Navin Sinha)
Chief Justice**

**Sd/-
(P. Sam Koshy)
Judge**