

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 15392 of 2012(O&M)

Date of Decision: July 3 , 2015.

M/s Jackson Laboratories Pvt. Ltd.

..... PETITIONER (s)

Versus

Union of India and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Sandeep Wadhawan, Advocate
for the petitioner.

Mr. Alok Kumar Jain, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

HEMANT GUPTA, J.

This order shall dispose of CWP No.15392 of 2012 (M/s Jackson Laboratories Pvt. Ltd. v. Union of India and others) challenging order dated 05.03.2012 whereby de-registration of the petitioner-firm permanently for dealing with the Medical Store Organization/Government Medical Store depots was maintained.

Petitioner is manufacturer of medicines and was registered with the Directorate General of Health Services vide letter dated 27.01.1999.

The petitioner made supply of medicines as per Indian Pharmacopoeia of 1996 (IP 1996). The supplies were made in the year 2000. However, Indian Pharmacopoeia 2000 (IP 2000) was made effective from 31.12.2000 which contemplates 'Dissolution Test' for determining the quality of drugs as against the 'Disintegration Test' as per IP 1996.

The grievance of the petitioner is that the medicines were manufactured prior to 31.12.2000 when the specifications contained in IP 1996 were in force therefore, the petitioner has wrongly been de-registered on the basis of 'Dissolution Test' though the supply was made when the IP 1996 was in force.

A perusal of the Annexure P9 shows that the Directorate General of Health Services passed an order dated 11.03.2003 wherein the approval of the competent authority for de-registration/ debarment of the petitioner-firm permanently for supply of all products was communicated. Later on 01.03.2009, the Directorate General, Health Services addressed a communication to the Director, National Informatics Centre, New Delhi to display on its website the list of debarred/blacklisted companies including the petitioner-company, which have been permanently de-registered with the Medical Store Organization. The petitioner submitted a representation against such action of the respondents. Since no action was taken, the petitioner filed CWP No.9054 of 2009 for setting aside the order dated 11.03.2003. This Court disposed of the writ petition on 09.06.2009 with a direction to the respondents to pass a speaking order on the representation of the petitioner. In pursuance of the said order passed by this Court, speaking order dated 28.07.2009, Annexure P15 was passed. Still

aggrieved, the petitioner filed CWP No.173 of 2010 which was decided on 14.10.2011 directing the respondents to decide the issue again after giving an opportunity of hearing to the petitioner. It is thereafter, the impugned order, Annexure P18, was passed on 05.03.2012.

Learned counsel for the petitioner has vehemently argued that the de-registration of the petitioner-firm has the effect of blacklisting of the firm permanently and such order is contrary to the judgment of Hon'ble Supreme Court in **Kulja Industries Limited v. Chief Gen. Manager W.T. Proj., BSNL and others, AIR 2014 SC 9**. It is also contended that, in fact, the medicines tested were manufactured as per Indian Pharmacopoeia 1996 which permitted 'Disintegration Test' whereas the medicines were tested and rejected on the basis of 'Dissolution Test' as per Indian Pharmacopoeia 2000 which is not legal. It is also argued that due to the order of deregistration, the petitioner is unable to execute the contract of any other medical institute.

Mr. Jain, learned counsel for the respondents points out that the petitioner was not deregistered only on account of failure of the tests as per IP 1996 or IP 2000 but in respect of other failure in the medicinal preparations in the tests carried out.

The fact remains that the order of debarment was passed in the year 2003. The petitioner has not been able to do business with the said organization or any of the instrumentalities of the state authorities for almost 12 years.

In **Kulja Industries' case** (supra) the court examined the question whether the court should determine the time period for which the firm should be blacklisted or the matter should be remitted back to the

authority to determine the period as the indefinite period of blacklisting was found to be not sustainable. The court remanded the matter to the competent authority to determine the period for which the firm would remain blacklisted.

The argument of learned counsel for the petitioner is that the petitioner has suffered the consequences of blacklisting for 12 years. The said period has affected its business interests enormously. Therefore, the respondents be directed to consider the issue of registration with the Medical Stores Organization without taking into consideration any of the earlier reports and independent on the fresh test which the department may consider appropriate at this stage.

Though in Kulja Industries' case (supra) the matter was remitted back to the department to determine the period for which the firm would remain blacklisted but we find that the period of 12 years is sufficiently long period to deny the right to do any further business with the State or its agencies.

Mr. Jain, learned counsel for the respondents pointed out that in almost identical matter, the Delhi High Court dismissed the writ petition as well as LPA No.633 of 2010 (IND-SWIFT Ltd. v. Union of India). However, in appeal, the Hon'ble Supreme Court on 22.01.2015 has permitted the petitioner to make a suitable representation to be decided by the competent authority in the light of the judgment of Hon'ble Supreme Court in Kulja Industries' case (supra). Therefore, the petitioner should be directed to submit representation, which shall be considered by the respondents in accordance with law.

We do not find any merit in the said argument. Two

representations submitted by the petitioners stands declined by the respondents. Any direction to submit another representation may not serve the cause of fairness and justice. In fact, the Delhi High Court was considering a matter in which the order of deregistration was passed in the year 2007 and the order of blacklisting was in operation for almost three years whereas, in the present writ petition, the order of blacklisting is in operation for almost 12 years which we find entitled the petitioner for consideration of the registration afresh.

Consequently, we deem it appropriate to direct the Department of Health and Family Welfare to consider the registration of the petitioner-firm with the Medical Stores Organization independently without being influenced by any of the previous reports. We further direct the Department of Health and Family Welfare to remove the name of the petitioner from the list of the firms who have been deregistered so as to provide an opportunity to the petitioner to conduct business according to law.

Writ petition stands disposed of.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 3, 2015.
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