

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 24th November, 2015

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W.P.(C) 9873/2015 & CM No.23881/2015 (for stay)

**M/S BONN NUTRIENTS PRIVATE LIMITED
& ANR**

..... Petitioners

Through: Mr. Neeraj Grover, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arun Bhardwaj, Adv. for R-1&2/UOI.
Mr. R.K. Gupta and Mr. M.K. Singh,
Advs. for R-3/AIIMS.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition was filed impugning (i) the communication dated 24th September, 2015 of the respondent No.3 All India Institute of Medical Sciences (AIIMS) debarring the petitioners for a period of three years from all dealings and participating in all contracts / tenders etc. with the respondent No.3 AIIMS; and, (ii) the Tender Notification issued by the respondent No.3 AIIMS pursuant to termination of the contract with the petitioners.

2. Since as per the Roster of this Court tender matters are entertainable by a Division Bench, the petition was listed before a Division Bench of this Court and notice thereof issued. On 6th November, 2015, finding that the

Tender Notification had exhausted itself owing to no bids having been received and the relief in that regard having thus become infructuous, the petition was ordered to be listed before a Single Bench of this Court to entertain the challenge to the debarment order.

3. The petition came up yesterday before this Bench when finding that the pleadings had already been completed, the counsels were heard. However during the hearing it was enquired, when the subject goods had been received in the premises of the respondent No.3 AIIMS. The matter was adjourned to today to enable the counsel for the respondent No.3 AIIMS to verify the said aspect.

4. The counsel for the respondent No.3 AIIMS states that the subject goods were received one day prior to the incident i.e. on 28th July, 2015.

5. The counsels including the counsel for the respondents No.1&2 Union of India have been further heard.

6. The petitioner no.1 is *inter alia* manufacturer/producer of breads and also manufactures and markets packs of two slices of high fibre brown bread and which were being supplied since the year 2012 to the respondent No.3

AIIMS by the petitioner no.2 M/s Goyal Traders, a distributor of the petitioner no.1.

7. On 29th July, 2015, one of such packs when served to a patient admitted in the respondent No.3 AIIMS was found to contain a live rat. Intimation thereof was immediately sent to the petitioner no.2 and representatives of the petitioner no.2 as well as of petitioner no.1 immediately reached the respondent No.3 AIIMS and were informed of the seriousness of the matter; they also expressed their shock, and after discussions, the following observations were recorded:

- (i) that the long sealing / bottom sealing of the subject pack was found to have an almost 2-3 inch long puncture;
- (ii) the rat must have entered through the opening, somewhere in transit and there was a “need to investigate”;
- (iii) the petitioners represented having given pest control system contract to M/s Pest Control India, leader in the field in India;
- (iv) the petitioners invited the representative of AIIMS to visit their factory to demonstrate that the petitioners take all care for maintaining good quality of the product.

8. The respondent No.3 AIIMS immediately terminated the contract with the petitioner no.2, being the distributor of the petitioner no.1 and issued a notice dated 9th September, 2015 to the petitioners to show cause as to why the petitioners should not be blacklisted and debarred from participation in any tender at respondent No.3 AIIMS. The show cause notice also referred to the proceedings of 29th July, 2015 when the sealed package with live rat was shown to the representative of the petitioners.

9. The petitioners submitted a reply dated 17th September, 2015 to the show cause notice setting out the good practices followed by them at their factory including for pest control and further contending that it was highly improbable that rat from an unknown source would crawl on the packing table, remain un-noticed by 5-6 food handlers working around the table, get wrapped along with two slices, survive high sealing temperature, remain undetected inside the pack and remain alive for the next two days in the sealed pack. It was further stated that “during our meeting, we had also shown a small opening (about 1-1.5 inch) on the sealing of the pack, from where it probably sneaked inside the pack.” The petitioners further impressed that they are in the business since 1995 and had been following all good manufacturing standards but would still enquire, at what stage the live

rat crawled into the package. The petitioners again invited the representative of the respondent No.3 AIIMS to their factory.

10. The respondent No.3 AIIMS has vide impugned communication dated 24th September, 2015 debarred the petitioner, as aforesaid, for a period of three years for the reason of, the live rat having been found in the eatables supplied by the petitioners and the petitioners having failed to submit a satisfactory reply to the show cause notice and to address the quality concern of the respondent No.3 AIIMS with patient safety issues.

11. The counsel for the petitioners has argued:

- (i) that each packet is vacuum sealed and it is not possible that a rat would survive inside the sealed pack;
- (ii) that for sealing, the package is subjected to high temperature, again ruling out the possibility of a rat, even if had entered the package, surviving;
- (iii) that the package, when inspected by the representative of the petitioner on 29th July, 2015 admittedly had a 1-1.5 inch slit/puncture therein, and the rat could have entered either at the

end of the distributor of the petitioner no.1 or in the premises of the respondent No.3 AIIMS;

- (iv) that there was a time gap between the time the packaged goods left the premises of the petitioners and were served to the patients in the respondent No.3 AIIMS and during which time the packets contained in cartons remained with the transporter or the distributor or in the store of the respondent No.3 AIIMS;
- (v) the neglect could have been of the transporter/distributor or of the employees of the respondent No.3 AIIMS and who have attempted to make the petitioners a scape goat;
- (iv) that there in fact is no proof that there was a live rat in the package and the whole exercise could have been to cause harm to the petitioners and to spoil the reputation of the petitioners and their product;
- (v) that the factory/plant of the petitioners where bread is manufactured/produced and sliced and packaged is a state of the art plant and no rat has been reported therein for months prior to the incident;

- (vi) the falsity of the incident is evident from the fact that a rat, even if had got packaged, could not have remained alive without any air and would have died;
- (vii) again the rat, even if had entered the package, could not have survived the high temperature to which the package is subjected to for the purpose of sealing;
- (viii) neither of the two slices of bread in the package was found to have been bitten/damaged by the rat and which also falsifies the incident, as a rat, even if had got packaged, would not have left the bread slices untouched;
- (ix) that besides the impugned communication, there is no order or a reasoned decision for so debarring the petitioners;
- (x) all that the respondent No.3 AIIMS has filed with its counter affidavit is a file noting of 21st September, 2015 which also merely records “the response for the show cause notice issued to M/s Bonn Nutrients Pvt. Ltd. is not satisfactory. Process to debar the Company from participation to be initiated”; there are no reasons and no dealing with the reply of the petitioners to

the show cause notice; no Committee was constituted to enquire into the incident;

(xi) no proper procedure for blacklisting has been complied with and the order debarring the petitioner is in violation of the principles of natural justice; and,

(xii) reliance is placed on *Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal* (1995) 1 SCC 70, *Raghunath Thakur Vs. State of Bihar* (1989) 1 SCC 229, *S.N. Mukherjee Vs. Union of India* (1990) 4 SCC 594, *Mekaster Trading Corporation Vs. Union of India* 106 (2003) DLT 573 and *G.D. Tewari and Co. Vs. Delhi Development Authority* 130 (2006) DLT 675 and on the basis thereof it is argued that the order of blacklisting is to be through a speaking order in as much as it affects the business and business venture and also has civil consequences for the future business and that the order of banning/debarring/blacklisting in the present case is not a speaking order within the meaning of the said judgments.

12. I have during the hearing enquired from the counsel for the petitioners that if the package was being subjected to high temperature during sealing thereof, how could the bread slices therein remain from being toasted.

13. The counsel for the petitioners could not explain.

14. The counsel for the petitioners during the hearing had also informed that same/similar packages are also supplied by the petitioners to the Indian Railways for serving to the passengers of Shatabdi trains. Having experience of the same and having not found the same to have been vacuum sealed, it was again enquired from the counsel for the petitioners. In fact today, the counsel for the petitioners has also brought a sealed packet to the Court and which is also not found to have been vacuum packed. I have further enquired from the counsel for the petitioners whether not a certain amount of air is trapped inside the package and would not the said air, besides the air trapped in the slices of bread, be enough for the rat to breath and survive.

15. Again no answer is forthcoming.

16. I have yet further enquired from the counsel for the petitioners as to what else could have been written/recorded by the respondent No.3 AIIMS

in the order banning/debarring the petitioners and whether not the facts of the case *res ipsa loquitur* speak of the default of the petitioners.

17. The counsel for the petitioners though attempted but could not state as to what other reasons in the circumstances could have been given by the respondent No.3 AIIMS for so banning/debarring the petitioners to bring it under the scope of a speaking order. In my opinion the requirement, in law of giving of reasons has to vary from facts to facts and there may be situations as the present one in which the facts speak for themselves and with no other reasons being required to be given.

18. The counsel for the respondent No.3 AIIMS in this regard also pointed out that the petitioners in the meeting on the same day, i.e. on 29th July, 2015 and as recorded on that date, did not dispute/controvert a live rat having been found in the packet supplied by the petitioners. It is argued that the denial is coming for the first time today. Attention is drawn to the handwritten letter dated 29th July, 2015 submitted by “Team Bonn C/o M/s Bonn Nutrients Pvt. Ltd.” comprising of Shri P.K. Goyal, Shri A.P. Chopra, Shri Ravinder and Shri Arun Walia and who have therein stated as under:-

“Sub: Regarding rat in two slice bread packet.

Dear Sir,

It is in regard to the discussion of a rat in two slice packet in the meeting. It is very serious. We are also shocked to see it and following are the observations for it:

- The long sealing/bottom sealing is punctured almost 2-3 inch long.*
- Rat must have entered through this opening somewhere in the transit. Need to investigate.*
- We have awarded the pest control system contract to M/s Pest Control India who is leader in the field in our country.*

You are our prestigious customer. We invite you to visit our factor which is one of the best facilities in the country in all respect. We are committing you utmost care in all respect. We are ISO22000 certified company and taking all care for manufacturing good quality of products.”

19. The counsel for the respondent No.3 AIIMS has then invited attention to the reply dated 17th September, 2015 of the petitioner to the show cause notice where also the petitioners have stated as under:-

“This refers to your notice dt.09-09-2015 received by us on 15-09-2015 and our email dt.15-09-2015 on the aforesaid issue:-

As already discussed with your team during our last meeting on 29-07-2015, it is not justified to hold our manufacturing unit responsible for the presence of “live” rat in the two slice bread.

Once again, we request your to consider the following points:-

Ours is an ISO 22000.2005 certified and FSSAI approved manufacturing unit having stringent GMP and GHP systems in place.

1. *Pest control operations in our unit are looked after by one of the most reputed and professional pest control agencies in India, i.e. PCI.*
2. *As per their guidelines rat bait boxes have been installed along the inside of walls in our plants including the packing halls.*
3. *Glue traps placed in the rat bait boxes are changed regularly. There are no gaps or holes, from where any rat or pest can sneak in. Regular monitoring is done by the PCI officer and our Utility Manager. Pest Activity in this area has never been observed.
Copy of our contract with PCI is attached.*
4. *The wrapping and sealing operations of two slice bread takes place simultaneously on a SS table, which is more than 3 ft. high. The sealing temperature is 170-180°C. It is highly improbable that:-
Rat from an unknown source had crawled on the packing table, un-noticed by 5-6 food handlers working around the table. Got wrapped along with two slices, survived high sealing temperature, and remained un-detected inside the pack. Surprisingly it remained alive for next two days in the sealed pack.*
5. *During our meeting, we had also shown you a small opening (about 1-1.5 inch) on the sealing of the pack, from where it probably sneaked inside the pack.*
6. *We are manufacturing since 1995 having all stringent GMP and GHP systems in place, still this matter is concern for us and debateable point how and at what stage a live rat crawled into packed.
Still if you so desire, your team is welcome to visit our manufacturing unit at Ludhiana to assess our stringent quality, GMP, GHP and pest control procedures placed in our plant, which are being regularly monitored by our team.”*

The counsel for the respondent No.3 AIIMS has highlighted that the presence of the live rat in the packet is not disputed in the said reply also and rather the petitioners had suggested that the rat “sneaked inside the pack” from the small opening on the bottom sealing of the pack. The counsel for the respondent No.3 AIIMS also states that cartons containing the packets are not stored anywhere in the respondent No.3 AIIMS and are generally served on the day of receipt and remain in the kitchen.

20. It is for this reason that the need to ask the respondent No.3 AIIMS to verify whether the record thereof was available had arisen and in response whereunto it has been informed that the subject packet was received in the respondent No.3 AIIMS only a day in advance.

21. I have further enquired from the counsel for the petitioners whether not, a small opening on the seal of the pack, as suggested by the petitioners in the reply dated 17th September, 2015 itself is a serious lapse when the petitioners/their distributors have contracted to supply sealed packages containing only two slices of bread meant for individual consumption and to remain untouched by hand.

22. All that the counsel for the petitioners could state is that the said puncture/slit on the packet could have been made by the employees of the respondent No.3 AIIMS who are now shifting the blame to the petitioners being sitting targets.

23. This was however never the case of the petitioners.

24. The respondent No.3 AIIMS along with its counter affidavit has *inter alia* filed (i) the letter dated 29th July, 2015 of the Assistant Nursing Superintendent, AB2 Ward to the Medical Superintendent of AIIMS reporting finding of a rat in a sealed brown high fibre bread package with net weight of 50 grams and use best before 31st July, 2015 endorsement in the breakfast served to bed no.AB2/I occupied by one Sanjeev Sharma; (ii) attendance sheet of a meeting convened in the respondent No.3 AIIMS on 29th July, 2015 itself in respect thereof; (iii) the writing aforesaid dated 29th July, 2015 of the representatives of the petitioners who had visited respondent No.3 AIIMS on the same day; (vi) driving licence of Shri P.K. Goyal, General Manager of the petitioner no.1 Company who was the first signatory to the said writing; (v) internal file notings of the respondent No.3 AIIMS from 29th July, 2015 onwards in respect of the said incident and

which show that the representatives of the petitioners had reached respondent No.3 AIIMS and were heard at 1130 hours.

25. Therefrom, I am satisfied that the decision to debar the petitioners is in compliance of the principles of natural justice. An opportunity of personal hearing was given to the petitioners within a couple of hours of the detection of the live rat in the eatable supplied by the petitioners. Though the petitioners had submitted a reply also on the same date but still formal show cause notice was served on the petitioners, also intimating to them the action proposed of debarring the petitioners. I am unable to fathom in the face of the record as to what other analysis could have been done by the respondent No.3 AIIMS. The petitioners, neither in their response dated 29th July, 2015 nor in their response dated 17th September, 2015 stated any such thing which required any discussion or further investigation/inquiry at the end of the respondent No.3 AIIMS to be able to reach a conclusion whether to so debar the petitioners or not. Once the petitioners had not disputed the existence of the live rat in the packet and had merely suggested that the rat could have entered from the opening in the packet, the reason given by the respondent No.3 AIIMS of the reply being not satisfactory is sufficient. As aforesaid, even if the petitioners had left a opening in the packet and had not sealed it

properly, enabling a rat to enter the packet, the respondent No.3 AIIMS is still justified in debarring the petitioners for the same also. It is significant that in the letter supra of the Assistant Nursing Superintendent, to the Medical Superintendent the name of the patient to whom the subject packet was served was mentioned. If the petitioners were disputing the incident, the petitioners should have asked to examine the said patient. The petitioners did not do so at that time. Even in the petition filed, no such case has been set up. The petitioners in their response as well as before this Court have only harped upon the good practices followed by them in their factory and/or the pest control measures undertaken by them at their factory but in the face of their admission of a rat nevertheless having found its way inside the packet, the same are of no avail.

26. The requirement of the element of giving reasons while following the principles of natural justice is a subjective one and the nature and the extent of the reasons required to be given may vary facts to fact. Supreme Court, in ***S.L. Kapoor Vs. Jagmohan*** (1980) 4 SCC 379 held that where admitted or indisputable facts speak for themselves and only one conclusion is possible or under law only one penalty is permissible, the arguments of natural justice

pale into insignificance. Put in other words, reasonableness does not require reasons to be stated.

27. I am also of the opinion that the scope of judicial review of administrative actions and particularly in matters relating to contracts is confined to examining whether the executive authorities have acted in a fair and transparent manner without any extraneous considerations and the action is compliant with the procedure prescribed therefor and/or the principles of natural justice and is not actuated by any extraneous considerations. It cannot be forgotten that the Government/Governmental Authorities, just like a private individual are free to choose with whom to contract. The only difference is that while freedom of individual private persons is absolute leaving them free to choose as per their whims and fancies, the exercise of choice by the Government/Government Authorities is subject to judicial review by the Court. Tested on the said anvil also, no ground for interference in exercise of power of juridical review is made out. There are no pleadings of the action against the petitioners being motivated or guided for any other reasons. The principles of natural justice have been followed. The petitioners have been given requisite opportunity. The respondent No.3 AIIMS cannot be faulted for, upon finding a live rat in a eatable packet supplied by the

petitioners, initiating action for debarment of the petitioners. There was nothing in the responses/replies of the petitioners which required any further inquiry or investigation or giving of reasons by the respondents. The period of three years for which the petitioners have been debarred is not such which can be said to be disproportionate. None of the said actions of the respondent No.3 AIIMS can be said to be unreasonable or illogical.

28. It cannot also be lost sight that the factual controversies which the counsel for the petitioners, during the hearing and without any foundation in the pleadings, sought to raise cannot be adjudicated in writ jurisdiction. The counsel for the petitioners kept on harping that it is the reputation of the petitioners which is at stake and the petitioners will be deprived of business not only from the respondent No.3 AIIMS but also from the other Governmental Agencies/Authorities. However, I do not see any reason as to how inspite of a live rat being found in a package of bread slices supplied and sealed by the petitioners, the petitioners can claim any such right. Supreme Court as far back as in *Ishar Das Vs. State of Punjab* (1972) 3 SCC 65 reiterated in *Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange* (1974) 1 SCC 167 in the context of food adulteration held that it is a menace to public health and an anti-social evil. The same equally applies to present

fact situation. The petitioners, supplying eatables to be served to those already ailing and admitted to a hospital ought to have shown greater concern. Supreme Court, again in *Centre for Public Interest Litigation Vs. Union of India* AIR 2014 SC 49 has emphasised that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India.

29. There is no merit in the petition.

Dismissed.

I refrain from imposing costs on the petitioners.

RAJIV SAHAI ENDLAW, J

NOVEMBER 24, 2015

‘bs’/‘pp’..