

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11750 of 2016

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M/s. Daffodills Pharmaceuticals Ltd. through its Director Prateek, son of Shri Narendra Choudhary resident of 770/1, Sotiganj, Meerut (UP)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary to the Government, Department of Health, Family Welfare and Medical Education, Government of Bihar, Patna.
2. The Bihar Medical Services and Infrastructural Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna through its Managing Director.
3. The Managing Director, Bihar Medical Services and Infrastructural Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna.
4. The Chief General Manager (Supply Chain), Bihar Medical Services and infrastructural Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Roy with Mr. Makardhwaj Upadhyay, Advocates
For the Corporation	:	Mr. Lalit Kishore, Sr. Advocate with Mr. Prabhat Kumar Singh, Advocate
For the State	:	Mr. Sunil Kumar Mandal, S.C. 3 with Mr. Arjun Prasad, AC to S.C.3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 22-08-2016 Heard learned counsel for the petitioner and Mr. Lalit Kishore, learned Sr.Counsel appearing for the Corporation.

The writ application has been filed seeking various reliefs but learned counsel for the petitioner is unable to show as to what element of public interest is involved in the matter so as to interfere with the different reliefs sought from this Court and thus he seeks to confine the present writ petition only with respect to

blacklisting of the petitioner for alleged violation of Clause 14(d) of the Tender Notice.

In the above circumstances, the writ application shall be confined only with respect to the show cause for blacklisting of the petitioner.

Pursuant to a tender notice the petitioner had applied for supply of different drugs to the Bihar Medical Services and Infrastructural Corporation Limited to make the drugs available to different Medical Colleges, Hospitals, Health Centres, etc. of the State of Bihar. The petitioner had pursuant to the same also filed an affidavit as required by Clause 3. The respondents received information from the Government of Uttar Pradesh regarding lodging of CBI case against the petitioner which was pending investigation and further that the Government of U.P. had directed that no purchase of medicines shall be made from the petitioner Company on account of the pendency of the said CBI enquiry. Upon receipt of the said information the petitioner was, apart from holding the petitioner as ineligible, issued show cause notice dated 8.6.2016 by the respondents stating that the petitioner Company was named in the FIR filed by the CBI and whereafter pending investigation purchase of medicines from the petitioner Company was banned in the State of U.P., and since this fact has not been



mentioned by the petitioner Company in its bid document, the petitioner was directed to show cause for blacklisting for violation of Clause 14(d) of the tender notice, which states that if it is found that the bidder has contravened any of such conditions the contract may be rejected/terminated and suitable punitive action may be taken.

The petitioner replied that nowhere in the tender notice it is stated that the fact of some enquiry by the CBI was to be mentioned and thus concealment had not been made by the petitioner. Learned counsel for the petitioner also refers to the report dated 27.5.2016 of the Secretary, Health Department, Government of Bihar and the Director-in-Chief (Admn.), Health Services, Bihar in which although a recommendation has been made to declare the petitioner as technically disqualified in the tender notice yet it was recommended that punitive action may be taken against the petitioner. It was further recommended that in future in all such tenders by BMSICL such manufacturing organizations among the tenderers against whom criminal case/vigilance case is pending should be debarred from participating in the tender and an affidavit with respect to non-blacklisting should also be filed indicating the words debar/de-registration. It is further stated in the said report dated 27.5.2016

that there was no such condition that the petitioner should have mentioned the fact regarding the debarment with regard to supply of medicines by the U.P. Government and for the same the petitioner cannot be blacklisted.

Mr. Lalit Kishore, learned Sr.Counsel appearing for the Corporation, on the other hand, submits that the case of the petitioner is broadly covered by the provisions of Clause 14(d) and Clause 3(n) of the tender notice and thus the show cause notice for blacklisting is justified.

Clause 14(d) of the tender notice is in the following terms:-

“If at any stage, it is found that the tender has been successfully obtained by the bidder by submitting forged/fabricated certificates/documents/licenses and/or by concealing the fact about blacklisting/debarring/de-registration of the firm by Govt. of India/Suspension/Cancellation/non-renewal of the manufacturing license of the bidder firm, the tender bid/rate contract may be rejected/terminated and suitable punitive action may be taken against the firm.”

Clause 3(n) of tender condition may also be noted, which is in the following terms:-

“The tenderer should give an affidavit sworn before first class Magistrate/Notary stating that the firm & its quoted product is not blacklisted

currently (as on the date of submission of the tender) by Central Government/Central Government agencies/any State Government or any of the State Government agencies/or any Drug procurement agencies or by BMSICL as per Annexure-II.”

It is evident from a perusal of Clause 14(d) that so far as the question of blacklisting, debarring, etc. is concerned, it only speaks of the same having been done by the Government of India. Even under Clause 3(n) which is sought to be relied upon by learned Sr.Counsel for the Corporation there is no reference to any debarring at all, rather it speaks of blacklisting by the Central Government/Central Government Agencies and any State or any of the State Agencies or any Drug Procurement Agencies or by BMSICL, but is totally silent with regard to debarment. It is thus evident from the tender condition itself, particularly Clause 14(d) sought to be relied upon in the show cause notice that the condition stated therein does not apply to the petitioner per se nor the petitioner has been blacklisted as yet by the Government of U.P. and thus neither Clause 14(d) nor Clause 3(n) can be held to be against the petitioner so as to lead to any charge of concealment, forgery and fabrication by the petitioner in the said matter. Hence, the show cause notice for blacklisting issued by the respondent Corporation is without any basis and no action can

be taken against the petitioner on the basis of either Clause 14(d) which is mentioned in the show cause notice or even Clause 3(n) which is sought to be relied upon by learned Sr.Counsel for the Corporation.

In the above circumstances, the show cause notice for blacklisting, being non est in the eye of law, is quashed.

The writ application is, accordingly, allowed only to the extent as stated above.

(Ramesh Kumar Datta, J)

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