

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1681 of 2015

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1. M/s Om Surgical Industries through its Partner, Mr. Naresh Kumar Goel, S/o Sri Jai Narayan Goel, having It's registered office at 7.7. km stone, at & P.O. - Titoli Jind Road, P.S.- Rohtak, District- Rohtak, Haryana.
 2. Mr. Naresh Kumar Goel, S/o Sri Jai Narayan Goel, Partner, M/s Om Surgical Industries having It's registered office at 7.7. km stone, at & P.O. - Titoli Jind Road, P.S.- Rohtak, District- Rohtak, Haryana.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
3. The State Health Society, Bihar through its Executive Director, Parivar Kalyan Bhawan, Sheikhpura, Patna. Bihar.
4. The Executive Director, State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna, Bihar.
5. The State Drugs Controller, Patna.
6. The Government Analyst, Bihar Drugs Control Laboratory, Agam Kuan, Patna.
7. The Superintendent, Govt. Printing Press, Guljarbag, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 25-02-2016

Heard learned counsel for the parties.

The petitioners have moved the Court for quashing the office order/memo no. 8498 dated 01.12.2014 issued by the respondent no. 4 by which the petitioner company has been

blacklisted for five years and debarred from taking part in any tender invited by the Health Department/State Health Society/District Health Society.

Learned counsel for the petitioners submits that the same was on the ground that the sample of Absorbent Cotton Wool of 500 gms., manufactured by the petitioner company, was found 'Not of Standard Quality', as per the report of the respondent no. 6. It is submitted that the said report cannot be a ground as the same is not a report in the eyes of law for the reason that the persons who had seized the samples and the respondent no. 6 who has analysed the same, were not competent to do so. It is submitted that besides the respondent no. 6 not holding the requisite qualification to hold the post, the Drug Inspectors, who had seized the samples were also not appointed in accordance with law inasmuch as the mandatory requirement of publication of their appointment order in the official gazette had not been complied with at the relevant time. Learned counsel submits that thus, the report of the respondent no. 6 cannot be relied upon for punishing the petitioners in the manner so done.

Learned counsel for the State and learned counsel for the respondents no. 3 and 4 submit that the qualification of the respondent no. 6 cannot be challenged for the purposes of the present case as the requirement of the relevant statutes do not bar him from conducting



the test of the Absorbent Cotton Wool and even though he may not be competent to conduct and analyse samples of items which are listed in Schedule-C of the Drugs and Cosmetics Rules, 1945, but for the Absorbent Cotton Wool, he is fully qualified. It is further submitted that once the quality of the Absorbent Cotton Wool, which is purchased by the respondent no. 3 meant for public use, has been found not to be of standard quality, keeping the larger public interest in view, the Court may not interfere in the matter on the technicality that the Drug Inspectors, who had seized the collection, were not properly notified as per the Drugs and Cosmetics Act, 1940. It is submitted that it is not the case of the petitioners that the samples seized were not properly tested and the result has also not been challenged on merits.

At this juncture, learned counsel for the petitioners submits that even if it is accepted that the Absorbent Cotton Wool was not of standard quality, punishment imposed on the petitioner of debarment of five years from 01.12.2014, appears to be disproportionate. He submits that the same needs review and further that the wool may not be fulfilling the required standard of absorbing or sinking, but it is also not the case of the respondents that it had not soaked or sinked. Learned counsel submits that if there has been any manufacturing defect, the petitioners should first have been given notice and the

product supplied should have been returned to them for being replaced with fresh material, which the petitioners could have done since it can also be the result of genuine malfunctioning of the manufacturing unit without there being any deliberate attempt of the petitioners to supply sub standard material.

On a pointed query by the Court on the last occasion with regard to the period of such debarment to the learned counsel for the respondents no. 3 and 4, he submits, upon instructions, that they are amenable to reconsider if the Court remands the matter to them.

Having considered the aforesaid position, this Court, keeping in view the larger public interest and the position that a competent person has analysed the samples, even though in a strictly technical sense, the persons who had seized the samples may not have been duly notified, but there being no challenge to their inherent qualification and mere formality of a procedural requirement not having been done, cannot be sufficient ground for the Court to turn a blind eye to the factual position especially when the matter relates to public health and the material was purchased for use by the general public.

The Court, however, finds force in the submission of learned counsel for the petitioners that the period of debarment is not in proportion to the offence alleged for the reason that if the

petitioners are allowed to take part in future tenders, the very presumption is that he shall do so after correcting their mistake and offering a product which fulfils the requirement of quality. Thus, in view of the fact that the test report states 'Not of Standard Quality' and not that it was unfit for the purpose it was meant to be used, the objective of imposing the punishment could have been equally served by debarring the petitioners for a shorter period.

Learned counsel for the respondents no. 3 and 4 being agreeable to reconsideration relating to period of debarment, the writ application, accordingly, is disposed off by setting aside part of the order/memo no. 8498 dated 01.12.2014 by which the petitioner has been debarred for the next five years.

The matter is remanded to the respondent no. 4 to pass a fresh order relating to the period of debarment of the petitioner company keeping in mind the discussions made hereinabove, within four weeks from the date of production of a copy of this order before the respondent no. 4.

(Ahsanuddin Amanullah, J)

Sujit/-

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