

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.357 of 2016

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Medipol Pharmaceutical India Private Limited, having its registered office at 128/5, Swiss House, Vishwas Nagar, Delhi-110032 and having its Branch Office at Jaipul Dhanki, near Kumhrar, Post Office-Bari Pahari, Police Station-Agamkuan, District Patna 800007 through its Branch Manager, Binod Kumar Mandal, son of Sri Gauri Shankar Mandal, resident of Jaipul Dhanki, near Kumhrar, Police Officer-Bari Pahari, Police Station Agamkuan, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Vikas Bhawan, New Secretariat, Patna
2. The Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna
3. The Managing Director, The Bihar Medical Services and Infrastructure Corporation Limited, Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna
4. The General Manager (F & A), the Bihar Medical Services and Infrastructure Corporation Limited, Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna
5. The General Manager (Procurement), the Bihar Medical Services and Infrastructure Corporation Limited, Department of Health, Government of Bihar, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal

For the Respondent/s : Mr. GP1- U.S.S.SINGH

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-03-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order as contained in F. No.BMSIC.500040/06-2014/780 dated 4.6.2014 by which the authorities have blacklisted the drugs, namely, Cefixime oral suspension 50 mg/5ml, 30 ml pack for five years and also made a prayer for quashing the reports of the



authorities by which illegally drugs have been treated to be sub-standard.

The Bihar Medical Services and Infrastructure Corporation Limited (hereinafter referred to as the Corporation) has issued notice inviting NIT for supply of medicines. Petitioner participated, was declared suitable for 41 items and accordingly letter of intent was issued in his favour. In pursuance of the letter of intent the petitioner has entered into an agreement on 1.10.2013 with the Corporation and used to supply the medicine.

Petitioner has received a letter vide letter no.231 dated 25.4.2014 thereby informed that Cefixime oral suspension I.P., 50 mg/5ml, 30 ml pack having batch no.DCFX001, DCFX003, DCFX004 and DCFX006 were found to be sub-standard as defined under Drugs and Cosmetics Act, 1940. In the show cause it has been mentioned that the report which the Corporation received showing that the drugs were not of good quality and issued the show cause why panel clause may not be invoked against the Company and show cause was to be filed within seven days failing which it would be presumed that the Company was nothing to say and action would be taken as per the agreement.



Petitioner Company has sent a letter mentioning therein that show cause notice is not attached with the necessary document, requested to supply the same and recorded that in absence of those documents the Company would not be able to file effective reply. As per claim of the petitioner his representative received report on 30.5.2014 and just thereafter without granting seven days time to give reply as the Company was under impression that seven days will be counted from the date of receiving the report but in stead of waiting seven days to expire the General Manager (F & A) of the Corporation vide order dated 4.6.2014 has taken a decision for blacklisting the aforesaid drugs for five years and no supply of these drugs will be taken from the petitioner's firm and other firms mentioned in the said letter.

During the arguments, learned counsel for the petitioner has submitted that vide order dated 4.6.2014 the Company has not been blacklisted rather it has confined to blacklisting of drugs, in terms of agreement, Clause 20 (Annexure-X) which provides that maximum period of blacklisting of drugs is three years and five years the period of black listing for the supplier Company. In the present case only drugs has been blacklisted and as such application of five years is not sustainable maximum



they could have blacklisted the drugs for three years. He has further submitted that after receipt of the report of laboratory with respect to drugs supplied he also submitted the report of his own laboratory showing that drugs of good quality, in view of such situation, request was made that the aforesaid drugs may be tested by any Government Laboratory.

In stead of deciding the case on merit this Court is of the view that as basically the petitioner has raised a grievance that he was not given opportunity for placing his case inasmuch as period of blacklisting cannot be extended for more than three years which has not been considered by the Corporation.

In such view of the matter, this Court feels that petitioner should have given proper opportunity to place his case. He has already filed show cause on 26.6.2014 before the Managing Director of the Corporation and in such view of the matter for the limited purpose this matter is remand back to hear the matter and Managing Direction of the Corporation will pass a reasoned order. For the time being the order dated 2.6.2014 is kept in abeyance. If the order is passed in favour of the petitioner this order will be treated to have been quashed. Managing Director of the Corporation is directed to dispose of the matter within a period of four weeks from the date of receipt/production of a



copy of this order.

With the aforesaid observation and direction this writ
petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	4.4.2017
Transmission Date	NA

