

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 16259 of 2017

Date of Decision: 26.7.2017

M/s Om Surgical Industries, Rohtak

....Petitioner.

Versus

Haryana Medical Services Corporation Limited, Panchkula

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Dhiraj Chawla, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 19.4.2017 (Annexure P-9) and dated 16.5.2017 (Annexure P-13) whereby its concluded contract has been cancelled on account of a subsequent event, i.e., an illegal debarment order dated 17.11.2016 passed by the Jammu and Kashmir Medical Supplies Corporation Limited (JKMSCL) [now quashed by the J&K High Court vide order dated 5.7.2017 (Annexure P-12)] which was on the basis of an order dated 1.12.2014 (Annexure P-3) passed by the State Health Society, Bihar blacklisting the petitioner which was subsequently set aside by the High Court of Bihar at Patna vide order dated 25.2.2016 (Annexure P-4). Further, a writ of mandamus has been sought directing the respondent to allow the petitioner to continue without insisting on picking back the supplied goods and to release the due payments for the supplies made and to continue to

issue purchase orders for the absorbent cotton in its favour.

2. The petitioner is a partnership concern and is engaged in the manufacture of absorbent cotton, non absorbent cotton, zigzag, bleech rose and other surgical materials. The respondent vide tender notice dated 19.9.2016 (Annexure P-1) invited online bids for short time tender for the alternative one time purchase of medicines and medical consumables for various items including absorbent cotton. In pursuance thereto, the petitioner submitted its bid for supplying cotton absorbent in the packet of 500 grams. The bid of the petitioner was accepted being the lowest rates and the same was communicated to the petitioner vide e-mail dated 3.2.2017 (Annexure P-2). The consent of the petitioner for supply orders for Haryana on alternative source was sought which it did vide letter, Annexure P-2. Further, the petitioner being a manufacturer of surgical cotton had been supplying the cotton to various organizations and during the course of its business, the petitioner was successful in getting the contract from the State Health Society, Bihar for the year 2013-14. However, vide order dated 1.12.2014 (Annexure P-3), the petitioner was blacklisted for a period of five years as its sample of absorbent cotton wool of 500 grams was 'Not Found of Standard Quality'. The petitioner challenged the said order before the High Court of Bihar at Patna by filing CWP No. 1681 of 2015 and the Patna High Court vide order dated 25.2.2016 (Annexure P-4) set aside the order dated 1.12.2014 (Annexure P-3) and remanded the matter back to the State Health Society, Bihar for passing a fresh order relating the period of debarment. However, no such fresh order was passed by the State Health Society, Bihar. A purchase order dated 11.1.2017 (Annexure P-5) for supplying cotton absorbent 500 grams at various warehouses in the State of Haryana for the value of ₹ 1,43,18,955/- was issued to the petitioner. The

petitioner was also awarded another contract for supply of cotton absorbent from JKMSCL for the year 2015-16 vide letter dated 4.5.2016 (Annexure P-6). Thereafter, the petitioner was issued a show cause notice dated 3.3.2017 (Annexure P-7) for imposing a penal action including cancellation of the contract and suspending the purchase order as the petitioner was debarred for a period of two years from 17.11.2016, i.e. the date of passing of the order by the JKMSCL which fact was concealed while bidding for the contract in question. The petitioner submitted its reply dated 4.3.2017 (Annexure P-8) to the said show cause notice. The respondent vide order dated 19.4.2017 (Annexure P-9) directed the petitioner to take back the cotton which was already supplied at various Districts. Along with the said order, a copy of the communication dated 17.3.2017 (Annexure P-10) from JKMSCL was also attached wherein it was stated that the petitioner was debarred from participating for a period of two years vide order dated 17.11.2016 on the ground of having found guilty in concealing the facts of blacklisting. Thereafter, the petitioner wrote a letter dated 1.5.2017 (Annexure P-11) to the JKMSCL stating therein that the order debarring them for two years was never received by them and they never concealed any fact. The petitioner filed Writ Petition No. 771 of 2017 (Annexure P-12) before the High Court of Jammu and Kashmir against the order dated 17.11.2016 and the said order was set aside of vide order dated 5.7.2017 (Annexure P-12) with liberty to pass a fresh order after hearing the petitioner. The respondent vide order dated 16.5.2017 (Annexure P-13) directed the petitioner to lift the material from the warehouses within 30 days. Thereafter, the petitioner contacted the State Health Society, Bihar for taking a final decision in terms of the order dated 25.2.2016 (Annexure P-4)

passed by the Bihar High Court who vide order dated 23.5.2017 (Annexure P-14) reduced the period of blacklisting the petitioner from five years to three years effective from 1.12.2014. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner shall make a detailed and comprehensive representation before the respondent by incorporating the grievance as raised in the present writ petition. He, however, prays that a direction be issued to the respondent to decide the representation expeditiously in a time bound manner in accordance with law.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the respondent within a period of one week from the date of receipt of certified copy of the order. It is directed that in the event of a representation being filed by the petitioner, the same shall be decided by the respondent in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within two weeks from the date of receipt of representation.

(AJAY KUMAR MITTAL)
JUDGE

July 26, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	No