

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17483 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, Distt.-Patna- 800007, through its Branch Manager, Binod Kumar Mandal, S/o Sri Gauri Shankar Mandal, at present resident of Jaipul Dhanki near Kumhrar, Post Office Bari Pahari, Police Station-Agamkuan, Distt.- Patna-800007.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Family Welfare, Govt. 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-800001.
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-800001.
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-800001.
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-800001.
6. Mr. Pradip Kumar Jha, the Managing Director, the Bihar Medical Services and Infrastructure Corporation Limited, Department of Health, Government of Bihar, 5th floor, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.

.... Respondents

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Appearance :

For the Petitioner : Mr. Chittranjan Sinha, Sr. Advocate.
Mr. Pritish Kumar Lal
Mr. Sanjeev Kumar
Mr. Rajeev, Advocates.

For the Resp. BMSCIL: Mr. Lalit Kishore, AG
Mr. Prabhat Kumar Singh, Advocate.

For the State : Mr. Ramadhar Singh, GP-25

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-03-2018

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing



the order as contained in F.N.:BMSIC/40025/27-2014/2194 dated 05.10.2016 whereby the respondent-Corporation has blacklisted the petitioner company with immediate effect for five years.

3. The short facts of the case according to the petitioner are that pursuant to the Notice Inviting Tender (NIT) issued by the Bihar Medical Services and Infrastructure Corporation Limited (hereinafter referred to as 'the Corporation'), the petitioner company participated and was declared eligible in respect of 41 items, and an agreement was duly entered into between the parties. Subsequently, in the backdrop of the order dated 24.07.2014 passed by this Court in C.W.J.C. No. 2305 of 2014 (*Md. Shahnawaz Ali Vs. The State of Bihar & Ors.*) being a Public Interest Litigation wherein it had been alleged that there was a phenomenal increase in the rate of the medicines procured by the Corporation in comparison to the rates at which the Bihar Health Society has been making such purchases, the Government appointed Dr. K.K. Singh Committee, and, later on, Sri Anand Kishore Committee to look into the matter. These committees submitted their reports, dated 20.08.2014 and 10.10.2014 respectively. It appears that based on the report of Dr. K.K. Singh Committee, the petitioner company along with two other firms was blacklisted for a period of two years by order dated 13.09.2014. The same was challenged in C.W.J.C. No. 16767 of 2014 on the grounds of violation of natural justice and was accordingly quashed and the matter was remitted back to the competent authority of the Corporation for issuing a fresh show cause



notice and passing a final order. Accordingly, a show cause notice dated 05.01.2015 was issued, requiring explanation in respect of the following four charges —

“(i) You (M/s Medipol Pharmaceutical Pvt. Ltd.) had not disclosed the details of the medicines/drugs which had been blacklisted by any State or any agency as stipulated by the Technical Evaluation Committee and for concealment of the details of the blacklisted product made you liable to be declared technically disqualified which was not done.

(ii) The report of the Enquiry Committee headed by Dr. K.K. Singh has also found that by awarding LOI (Letter of Intent) for 47 drugs out of 216 drugs to the M/s Medipol Pharmaceutical Pvt. Ltd. in the tender process a favouritism was shown to you by the BMSICL.

(iii) The undersigned Company BMSICL has also found that the drugs supplied by you is not of standard quality as defined in Drugs and Cosmetic Act, 1940 and a show cause with respect to same along with a list of drugs not of standard quality was served upon you. (Copy of the earlier show cause dated 25.04.2014 alongwith list of drugs enclosed).

(iv) Your supply position had also been found extremely poor with incessant delay in supply of drugs such as Cough suppressant, Spironolactone, Frusemide, Misoprostol, Clotrimazole, Sodium Valporate, Carbmazepine and a letter dated 28.02.2014 regarding last opportunity was given for non-supply of the said drugs. (Copy of the letter dated 28.02.2014 alongwith list of drugs enclosed).”



4. The petitioner accordingly submitted its reply on 15.01.2015, which was however rejected and by order dated 06.04.2015, the petitioner was once again blacklisted, this time for five years, *inter alia* placing reliance on the second enquiry report submitted by the Committee headed by Sri Anand Kishore. The said order of blacklisting was quashed by order dated 03.12.2015 passed by this Court in C.W.J.C. No. 7523 of 2015 as the second enquiry report had not been made available to the petitioner and no opportunity in that regard had been granted prior to the passing of the impugned order. The Corporation was granted liberty to pass orders afresh after the supply of a copy of the second enquiry report to the petitioner. The Corporation accordingly supplied a copy of the second enquiry report submitted by Sri Anand Kishore, and called upon the petitioner to submit its reply. The petitioner then filed its reply dated 17.08.2016, *inter alia*, also raising an objection that while the show cause notice was issued with reference to the enquiry report of Dr. K.K. Singh alone, the blacklisting order dated 06.04.2015 was largely based on the findings of the second enquiry report headed by Sri Anand Kishore, without however confronting the petitioner in that regard in the show cause notice.

5. Brushing aside such objection, however, the Corporation passed the impugned order dated 05.10.2016 once again blacklisting the petitioner for a period of five years.

6. Mr. Chittranjan Sinha, learned Senior counsel



appearing on behalf of the petitioner submits that the impugned order of blacklisting is wholly arbitrary and unreasonable and cannot be sustained in law. It is contended that the impugned order dated 05.10.2016 has relied also on the findings of the second enquiry committee headed by Sri Anand Kishore and has been passed after supplying a copy of the report to the petitioner but, however, no fresh show cause notice in this regard had been issued to the petitioner. The earlier show cause notice dated 05.01.2015 was based only on the enquiry report of Dr. K.K. Singh and the petitioner has not been confronted with the enquiry report of Sri Anand Kishore, which is in clear violation of principles of natural justice. A specific plea in this regard has been taken in paragraph-6 of the petitioner's reply dated 17.08.2016 to the Corporation. A specific prayer was also made in paragraph-9 of the said letter requesting the Corporation to issue a fresh show cause notice, pointing out that mere supply of the report of the committee headed by Sri Anand Kishore was not sufficient.

7. Learned Senior counsel for the petitioner has sought to advance submissions with regard to each of the four charges on the basis of which the petitioner has been blacklisted.

8. So also learned counsel for the respondent-Corporation has referred to the counter affidavit and sought to support the impugned order of blacklisting.

9. Having heard the parties, this Court is not inclined to enter into the merits of the matter and the validity of the reasons



assigned by the Corporation for blacklisting the petitioner. This Court takes note of the specific objection on the grounds of violation of natural justice inasmuch as no show cause notice has been issued with reference to the second enquiry report submitted by the committee headed by Sri Anand Kishore. The petitioner had even gone to the extent of specifically requesting for a fresh show cause notice from the Corporation. Instead of confronting the petitioner in a specific manner with reference to the second enquiry report of Sri Anand Kishore, the Corporation went ahead and passed the final order dated 05.10.2016. Clearly therefore the petitioner has been prevented from knowing the precise nature of the reasons for blacklisting it with reference to the report of Sri Anand Kishore and it has thus been unable to file a meaningful and effective reply in that regard. In the judgment dated 03.12.2015 passed in C.W.J.C. No. 7523 of 2015, this Court had quashed the earlier order of blacklisting dated 06.04.2015, "granting liberty to the respondents to pass orders afresh in accordance with law after supplying a copy of the second enquiry report of the Committee headed by Sri Anand Kishore and after grant of reasonable opportunity to the petitioner." Failure to issue a fresh show cause notice with reference to the report of Sri Anand Kishore must be held to be a failure to grant a reasonable opportunity to the petitioner and the impugned order dated 05.10.2016 cannot be said to be in accordance with law, inasmuch as such order travels beyond the scope of the show cause notice, which is wholly impermissible and amounts to a violation



of natural justice.

10. In *SACI Allied Products Ltd. v. CCE*, (2005) 7 SCC 159 it was held that *"The impugned order of the Tribunal which had gone beyond the show-cause notice and the order of the respondent Collector is, therefore, liable to be set aside."*

Similarly, the Hon'ble Supreme Court took the following view in *Reckitt & Colman of India Ltd. v. CCE*, (1997) 10 SCC 379, wherein it has been observed as follows —

"3. It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show-cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed."

11. In the above circumstances, this Court is not inclined to enter into the detailed merits of the submissions of learned counsel for the petitioner with reference to each of the four charges stated in the show cause notice as this appears to be a somewhat premature stage. Accordingly, the impugned order dated 05.10.2016 (Annexure-18) is set aside with liberty to the respondents to issue a fresh show cause notice, if so advised, stating the concise case that the petitioner is required to meet in terms of the findings in the two enquiry reports,



before passing fresh orders in accordance with law after granting a reasonable opportunity of hearing to the petitioner.

12. It is necessary also to take note of the second supplementary affidavit filed today on behalf of the petitioner expressing an apprehension that the respondents are bound to once again blacklist the petitioner in view of the direction to this effect contained in letter no. 879(1) dated 05.09.2014 (Annexure-26) issued by the Government to the respondent-Corporation. It is trite law that an authority which has to take a decision is bound to act independently and not at the dictates of any other person even if it be a superior authority. As such any fresh order as may be passed by the respondent-Corporation, shall be its independent decision without in any way being influenced by the directions of the Government. It is also directed that if a decision is taken to blacklist the petitioner, the period of blacklisting shall be reckoned from the date when the first order of blacklisting was passed and not from a prospective date. Considering that the issue of blacklisting has lingered for a long time involving repeated round of litigations, it is expected that the entire process shall be concluded within a reasonable time frame and in any event, not exceeding three months hereof. Needless to say, the petitioner shall cooperate in early disposal of the matter.

13. It is made clear that if the petitioner participates in any tender in the meantime, the same shall be subject to any fresh orders of blacklisting as may be passed against the petitioner pursuant



to the liberty as aforesaid.

14. The writ petition stands disposed of as above.
15. I.A. No. 91 of 2018 also stands disposed of.

Md. Ibrarul/-

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	09.03.2018
Transmission Date	N.A.

