

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.16877 of 2012

ORDER:

The petitioner seeks Writ of *Mandamus* declaring the impugned order in File No.15/PH/3/MW/2011-12, 327/D, dated 19.05.2012, in black listing the petitioner as illegal, arbitrary and contrary to the Drugs and Cosmetics Act, 1940 and also in violation of Article 14 of the Constitution of India and, consequently, direct the respondents to set-aside the impugned order and permit the petitioner to supply the material *i.e.* 1) Bandage Cloth (Medical) 20 m x 100 cm, 2) Gauge Cloth (Medical) 20 m x 100 cm, 3) Roller Bandage Medical 10 cm x 4 m, and 4) Roller Bandage (Medical) 15 cm x 4 m to the 1st respondent.

2a) Petitioner's case, in brief, is that he is the proprietor of Srinivasa Textiles, supplying the Bandage Cloth (Medical) 20 m x 100 cm, 2) Gauge Cloth (Medical) 20 m x 100 cm, 3) Roller Bandage Medical 10 cm x 4 m and Roller Bandage (Medical) 15 cm x 4 m to the government of Andhra Pradesh since 1991 and also to the 1st respondent – Corporation since 2005, till date, without any complaint. While so, the 1st respondent – Corporation issued the show-cause notice *vide* RC No.15/ph3/MW/2011-12, dated 24.01.2012, pointing out certain irregularities, and black-listed the firm, which is in contravention of G.O.Rt. No.675, dated 05.06.2006, issued by the 2nd respondent; wherein it is mentioned that in order to give priority to the Handloom Sector, the Government directed for procurement of gauge cloth and roller bandages

in the ratio of 60:40 from all the Handloom Manufacturing Units and S.S.I. Units. In reply to the show-cause notice, the petitioner submitted his representation on 08.02.2012. On the ground that the petitioner failed to furnish any evidence or proof in support of manufacturing of handloom bandage cloth, the petitioner's firm was black-listed from making supplies to the government for a period of three years.

(b) It is his further case that the petitioner is having valid drug license for manufacturing of required products issued by the Drug Controlling Authority and also good manufacturing practice certificate issued by them. The petitioner submitted quotation for supply of surgical dressing material required by the 1st respondent – Corporation and, after a thorough verification, the Corporation has issued the purchase order for supply of the aforesaid material in the month of July, 2011. On receipt of the purchase order, the petitioner completed the process of manufacturing the required items and supplied the same to the 1st respondent. But, as the firm of the petitioner is not engaged in manufacturing of handloom bandage cloth, the officials of the 1st respondent – Corporation inspected the firm on 12.12.2011 and submitted a report stating there is no handloom/weaving activity at the premises of the petitioner and also the petitioner failed to furnish proof in support of the manufacturing of handloom bandage cloth. Thereby the firm of the petitioner was blacklisted without properly considering the explanation of the petitioner through the impugned order dated 19.05.2012. The officials who visited the premises of the petitioner did not even furnish the inspection report to

the petitioner and without giving an opportunity of personal hearing, the impugned order was passed in violation of principle of natural justice and also in violation of Article 14 of the Constitution of India.

Hence, the Writ Petition.

3. No representation for the respondents. No counter-affidavit is filed on their behalf.

4. Heard learned counsel for petitioner.

5. The submission of learned counsel for the petitioner is that the impugned order blacklisting the petitioner concern for three years is illegal and arbitrary and against the principles of natural justice inasmuch as the notification for supply of general medicines and surgical items does not reflect that the supplier should be a manufacturer and should have handloom activity. Learned counsel strenuously argued that the petitioner textile company has been supplying the surgical items since 2005 by procuring the raw material from various manufacturers and processing them as per Schedule F-2 and 3F of the Drugs and Cosmetics Act and never the respondent authorities doubted or questioned the quality of the material supplied by him. However, under the impugned order, the 1st respondent blacklisted the petitioner for a period of three years only on an untenable ground that the surgical items in issue were exclusively reserved for Handloom Units and SSI units engaged in manufacturing and the petitioner was not engaged in manufacturing

activity at his premises. The said argument is contrary to G.O.Rt. No.675, dated 05.06.2006, and thus prayed to allow the Writ Petition.

6. In the light of above submission, I have given my anxious consideration to G.O.Rt. No.675, dated 05.06.2006, and the notification issued by the 1st respondent calling for tenders for general medicines and surgical items for 2010-11. The G.O.Rt. No.675, dated 05.06.2006, issued by the Government of Andhra Pradesh, Health Medical and Family Welfare (M1) Department, dated 05.06.2006 specifies that the said G.O. was issued cancelling the earlier G.O.Rt. No.93, HM & FW (M1), dated 27.01.2006. The operative portion of the G.O.Rt. No.93 is thus:

“4. The Government have examined the matter carefully and cancelled the orders issued in the reference 2nd read above. In consonance with its Policy of according priority to the Handloom Sector, the Government further direct that the procurement of Gauge Cloth and Roller Bandages should be made in the ratio of 60:40 between Handloom manufacturing Units and SSI Units having Drug License. The Andhra Pradesh Health & Medical Housing & Infrastructure Development Corporation may call for tenders from among these units and place the matter before the Rate Contract Committee, and to decide the rate contract.”

7. Thus, this G.O. specifies that the Government, in order to give priority to handloom sector, took a policy decision to the effect that the procurements of gauge cloth and roller bandages should made in the ratio of 60:40 between Handloom manufacturing units and SSI Units having Drug License. Then, a perusal of the tender notification

No.06/APMHIDC/Drugs Wing/2010-11, issued by the Executive Director, APMHIDC, for procurement of general medicines and surgical items from manufacturers and authorized distributors shows, it contains a specification sofaras surgical items are concerned. It was mentioned therein as follows:

Surgicals Items Lists (Reserved only for SSI Units & Handloom Textiles)					
Sl.No.	Item Code	Item name	Units	Description	Remarks
1	1041	Absorbent Cotton 500 gms Net	1	500 gm	Valid GMP, License, SSI certification from Industries Department & Handloom Textiles Department Certification
2	1042	Bandage Cloth (Medical) 20m x 100 cm	1	20 mt x 100 cms	
3	1045	Gauge Cloth (Medical) 20 m x 100 cm	1	20 Mts x 100 cm	
4	917	Intra Venous Sets (without Air Went)	1	Gripping of I.V. Bottles ISI or CF FDA ETO Sterilized	
5	1046	Roller Bandage (Medical) 10 cm x 4 m	1	10 cm x 4 Mtrs	
6	1047	Roller Bandage (Medical) 15 cm x 4 cm	1	15 cm x 4 Mtrs	

8. Thus, the notification is self explanatory to the effect that the procurement of the surgical items is reserved only for SSI Units and Handloom Textiles and such suppliers must produce SSI Certification from Industries Department and Handloom Textiles Department. Therefore, it is preposterous for petitioner to contend that the notification is silent that the supplier must have a handloom manufacturing unit. The impugned order shows that the Officers of the 1st respondent on receiving the complaints to the effect that some of the handloom units in whose favour the purchase orders were issued were not engaged in manufacturing

of handloom bandage cloth and the units do not have ability to manufacture, personally visited those units including the unit of the petitioner on 12.12.2011 and observed that the handloom/weaving activity was not undertaken in the unit of the petitioner. Therefore, the tender submitted by the petitioner is in contravention to G.O.Rt. No.675, dated 05.06.2006, and also to the notification, dated 18.02.2011. In that view of the matter, the impugned order, blacklisting the petitioner unit for three years, cannot be found fault. Hence, I do not find any merit in the Writ Petition.

9. In the result, the Writ Petition is dismissed. However, this order will not preclude the petitioner from participating in future tender process, subject to his fulfilling the tender conditions. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 26.12.2018
Dsh

U. DURGA PRASAD RAO, J