

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 20004 of 2018 (O&M)
Date of Decision: **31.08.2018**

Devansh Testing and Research Laboratory Pvt. Ltd.

.....Petitioner

versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Shiv Kumar, Advocate, for the petitioner.

KRISHNA MURARI, CHIEF JUSTICE

Petitioner is a Private Limited Company under the Companies Act engaged in testing of drugs, pharmaceuticals, chemicals, cosmetics, food products, poultry feed, waste water, air pollution etc. and is duly approved by the Drug Controlling Authority, Uttarakhand, for rendering quality assurance service having Registration Certificate bearing No. 1/UA/CTL/2010.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 01.08.2018 passed by respondent No.2 cancelling the rate contract awarded in its favour and black-listing the company for a period of five years and forfeiting the performance bank guarantee.

3. Facts giving rise to the dispute in brief can be summarized as under:-

Respondent No.2-corporation floated a tender for analysis of drugs, testing of drugs, consumable surgical and suture items for the respondent-corporation. Petitioner company also participated and was

successful and accordingly a contract agreement was signed which is operative from 14.12.2016 to 13.12.2018.

4. The petitioner company was entrusted the job of testing the samples of Paracetamol Pediatric Oral suspension. After testing the aforesaid drugs in accordance with the prescribed procedures and standards a report was submitted that the samples were of standard quality in respect to assay and description. Since there was some complaint from Warehouses with respect to crystal formation in the drug bottles, State Drug Controller was requested to take samples of the same batches and to get it tested. The Government Analyst, Haryana after testing the samples submitted a report that 4 drugs were not of standard quality.

5. Finding variations in Drug Analyst Report submitted by the petitioner company and the State Drug testing laboratory, a show cause notice dated 09.05.2018 was issued requiring the petitioner company to show cause as to why proper testing was not done and why action may not be taken as per terms and conditions of para-6 of the Rate contract. After considering the reply submitted, by the petitioner company, to the show cause notice, respondent No.2 found that there was variation in the test reports submitted by the petitioner company and the Government Analyst, Haryana, hence as per clause-6 of the terms and conditions of the Rate contract, the contract was terminated with immediate effect and the petitioner company was placed in black listed for a period of five years and performance guarantee was also forfeited. It may be relevant to quote the following findings recorded in the impugned order:-

“In view of the variations found in the test reports by the empanelled lab and Government Analyst, Haryana, in 4 batches of samples of Paracetamol

Pediatric Oral Suspension i.e. batch No.S-2121, 2134, 2142, 2149 and one batch of sample of Calcium with Vitamin-D3 tablet batch No. CUTT-93 with respect to assay and description, it is quite evident that proper testing was not done by the firm and hence, firm has violated para no.6 of the Rate contract, since there are more than three instances in assay test and four instances other than assay in a year. Hence, as per the clause No.6 of the terms and conditions of the RC, the rate contract No.RC-16/MMC/HMSCL/3/4-A-225/8952 dated 14.12.2016 awarded to the firm is hereby terminated with immediate effect and the firm (service provider) is also blacklisted for a period of 5 (five) years and resultantly, performance bank guarantee is forfeited.”

6. Learned counsel for the petitioner submits that it was clarified in the reply that the petitioner company verified their system and documentary evidence and found satisfactory performance at their end and the variations in the test reports could be because of time gap between sending the samples to the petitioner company and to the Government Analyst, Haryana. It was also pointed out in the reply that variations could be due to stability issue or chemical interaction, temperature variation, humidity but the impugned order has been passed without taking into consideration the aforesaid factors highlighted in the reply to the show cause notice and thus the impugned order is bad in law and deserves to be set aside.

7. The next submission advanced by learned counsel for the petitioner is that since no opportunity of personal hearing was afforded to the petitioner and the reply to the show cause notice has also not been properly considered, as such the order is in violation of the principle of natural justice and liable to be set aside.

8. We have considered the arguments advanced by learned counsel for the petitioner and perused the record.

9. Paragraph-6 of the Rate contract agreement reads as under:-

“6. Random sampling:-

To assess the correctness of the test results being given by the Service Provider, random samples could also be sent simultaneously to the Government Analyst or at least to two other empanelled laboratories for testing and if any variation is found, the result would be informed to the Service Providers. If there is any variation in the analytical reports furnished by the Service Providers and the report of the Government Lab or other empanelled lab for 3 times in assay test and 4 times for other than assay, in a year, the agreement shall stand terminated and Service Provider blacklisted for a period of five years after following the due process. On termination, the performance guarantee shall stand forfeited and encashed.”

10. It may also be relevant to quote clause 1.5.3 of the contract agreement between the parties which reads as under:-

“**1.5.3** -To assess the correctness of the test results being given by the Service Provider, random samples could also be sent simultaneously to the Government Analyst or at least to two other empanelled laboratories for testing and if any variation is found, the result would be informed to the Service Providers. If there is any variation in the analytical reports furnished by the Service Providers and the report of the Government Lab or other empanelled lab for 3 times in assay test and 4 times for other than assay, in a year, the agreement shall stand terminated and Service Provider blacklisted for a period of five years after following the due process. On termination, the performance guarantee shall stand forfeited and encashed.”

11. Impugned order records a finding that there are more than three instances in assay test and four instances other than assay in a year and hence by invoking Clause-6 of the terms and conditions of the Rate contract

and clause 1.5.3, the impugned order cancelling the Rate contract, black listing the petitioner company and forfeiting the performance guarantee, has been passed. The aforesaid findings have been arrived at by the authorities after taking into account reply to the show cause submitted by the petitioner company which becomes clear from a perusal of the impugned order. Thus, it cannot be said that reply of the petitioner has not been taken into account.

12. In so far as the technical aspects of the reply submitted by the petitioner company are concerned, with respect to proper storage etc. the same have been considered by the Experts. This Court has no expertise to test the technical analysis and observations recorded by the Experts. And once Experts have considered the issue in its entirety, it is not for this Court to sit in appeal over the findings given by Experts in the field. Admittedly, even according to the petitioner itself, there was variation in its report and the one submitted by the Government Analyst, Haryana and after considering the reply to the show cause notice, the impugned order has been passed invoking the provisions of para-6 of the Rate contract and clause 1.5.3 of the agreement between the parties. Admittedly, the impugned order has been passed after show cause notice calling for reply from the petitioner company and thus it cannot be said that the order is in any way in violation of the principle of natural justice.

13. Learned counsel for the petitioner has placed reliance on various judgments of the Hon'ble Apex Court in cases ***M/s Eursian Equipment and Chemicals Ltd. v. State of W.B. and another*** 1975 AIR (SC) 266, ***Raghunath Thakur v. State of Bihar and others*** 1989 AIR (SC) 620, ***M/s Southern Painters v. Fertilizers and Chemicals Travancore Ltd. and another*** 1994 AIR (SC) 1277, in support of the contention that since the

order of black-listing involves civil consequences, as such, can only be passed after due notice and opportunity.

14. There cannot be any dispute about the aforesaid proposition as the same stands well settled by catena of decisions of Hon'ble Apex Court. However, on an application of the aforesaid legal principles to the facts of the case, it is found that before cancelling the contract and passing the impugned order of black listing, a show cause notice was issued which was duly replied by the petitioner and the impugned order was passed after taking into consideration the said reply. Thus, by no stretch of imagination, it can be said that the impugned order has been passed in violation of the principles of natural justice. Thus none of the arguments advanced by learned counsel for the petitioner merits any consideration. Thus, the impugned order cannot be said to be vitiated in law.

15. The petition is thus devoid of any merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2018

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No